TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912.

No. 266.

ERIE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED MAY 29, 1912.

(23,230)

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 22, 1914.

1 STATE OF NEW YORK, *ss:*

Court of Appeals.

Pleas in the Court of Appeals, held at the Capitol, in the City of Albany, on the 26th day of April, in the year of our Lord one thousand nine hundred and ten, before the judges of said court.

Witness the Hon. Edgar M. Cullen, Chief Judge, Presiding; R. M. Barber, Clerk.

Remittitur, April 27th, 1910.

THE PEOPLE OF THE STATE OF NEW YORK, Appellant,
ag'st
ERIE RAILROAD COMPANY, Respondent.

Be it remembered, that on the 31st day of January in the year of our Lord one thousand nine hundred and ten, The People of the State of New York, the appellant in this action, came here into the Court of Appeals, by Edward R. O'Malley, Attorney General, their attorney, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the Second Judicial Department. And Erie Railroad Company, the respondent in said action, afterwards appeared in said Court of Appeals by George N. Orcutt, its attorney. Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

2 Whereupon, the said Court of Appeals having heard this cause argued by Mr. Edward R. O'Malley, of counsel for the appellant, and by Mr. George N. Orcutt of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is reversed and judgment of trial court affirmed with costs in both courts.

And it was also further ordered that the record aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said order of Appellate Division be reversed and judgment of trial court affirmed with costs in both courts, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by them given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York, before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court before the Justices thereof, &c.

R. M. BARBER,
Clerk of the Court of Appeals
of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *April 27th*, 1910.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the Court of Appeals, with the papers originally filed therein attached thereto.

3 [Seal State of New York Court of Appeals.]

R. M. BARBER, *Clerk*.

STATE OF NEW YORK,
Rockland County, Clerk's Office, ss:

I, Cyrus M. Crum, Clerk of said County, hereby certify that I have compared the foregoing copy remittitur with the original now on file in said office, and find the same to be a true and correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed the Seal of said County this 14 day of May, 1912.

[Seal Rockland County.]

CYRUS M. CRUM, *Clerk*.

4 Supreme Court, Appellate Division, Second Department,
Rockland County.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs-Appellants,
against
ERIE RAILROAD COMPANY, Defendant-Respondent.

Statement under Rule 41.

This action was begun by the service of the summons and complaint herein on January 14, 1908. Issue was joined by the service of the answer of the defendant to the complaint February 5, 1908. The original parties to the action are as above stated and have not been changed.

5 *Notice of Appeal.*

Supreme Court, Rockland County.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs,
against
ERIE RAILROAD COMPANY, Defendant.

SIRS: You will please take notice, that the plaintiffs above named, the People of the State of New York, hereby appeal to the Court of Appeals from the order of the Appellate Division, Second Department, entered in the office of the clerk of said Appellate Division on the 10th day of December, 1909, a certified copy of which was entered in the office of the clerk of Rockland county on the 17th day

of December, 1909 and said plaintiffs hereby appeal from each and every part of said order.

Dated, Albany, N. Y., January 17th, 1910.

Yours, etc.,

EDWARD R. O'MALLEY,
Attorney General, Attorney for Plaintiffs,
Capitol, Albany, N. Y.

To George N. Orcutt, Esq., Attorney for Defendant, 50 Church Street, New York City, and to the Clerk of the County of Rockland.

6 *Notice of Appeal.*

Supreme Court, Rockland County.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs,
against
ERIE RAILROAD COMPANY, Defendant.

Please take notice that the above-named defendant, Erie Railroad Company, hereby appeals to the Appellate Division of the Supreme Court for the Second Department, from the judgment of this court, entered and filed herein in the office of the clerk of the county of Rockland on or about the 3d day of December, 1908, whereby it was adjudged that the said plaintiff recover of the said defendant the sum of $100 as a fine and penalty, together with the costs of this action, and the said defendant appeals from each and every part of said judgment, as well as from the whole thereof.

Dated, New York, N. Y., December 16th, 1908.

GEORGE N. ORCUTT,
Attorney for Defendant,
50 *Church Street, New York City.*

To the Clerk of the County of Rockland, and William S. Jackson, Attorney-General, Attorney for Plaintiff, Albany, N. Y.

7 *Summons.*

Supreme Court, County of Rockland.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs,
against
ERIE RAILROAD COMPANY, Defendant.

To the above-named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiffs' attorney, within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment

will be taken against you by default for the relief demanded in the complaint.

Trial to be held in the County of Rockland.

Dated, January 9th, 1908.

WILLIAM S. JACKSON,
Attorney General of the State of New York,
Plaintiff's Attorney, the Capitol, Albany, N. Y.

8 *Complaint.*

Supreme Court, County of Rockland.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs,
vs.
THE ERIE RAILROAD COMPANY, Defendant.

For their complaint in the above-entitled action said plaintiffs allege, upon information and belief:

I. That at all of the times and days hereinafter mentioned said defendant was and now is a railroad corporation, organized and existing under the laws of the State of New York, and as such corporation was and now is operating a line of railroad in the State of New York, in Rockland County and other counties, extending from Piermont, N. Y., to Dunkirk, N. Y.

II. That on or about the first day of November, 1907, said defendant, in violation of the Labor Law of the State of New York, Chapter 415 of the Laws of 1897, entitled, "An Act in relation to labor constituting chapter thirty-two of the General Laws," as amended by Chapter 627 of the Laws of 1907, and especially in violation of Section 7*a* of said law, did require and permit one David Henion, a telegraph operator, who was spacing trains by the use of the telegraph under what is known and termed the block system, and who was, at said times, reporting trains to another

9 office and offices and to a train dispatcher or dispatchers operating one or more trains under signals and telegraph or telephone leverman, who were manipulating interlocking machine in railroad yards and on main tracks out on the line, and train dispatchers in defendant's service, whose duties pertained to the movement of cars, engines and trains on defendant's railroad by the use of the telegraph in dispatching and reporting trains and receiving and transmitting train orders, to be on duty for more than eight hours in said day of twenty-four hours, and to be on duty from seven o'clock A. M. to seven o'clock P. M. on said first day of November, 1907, at said defendant's tower SJ at Sterlington, in said County of Rockland, N. Y., there being on said day no extraordinary emergency caused by accident, fire, flood or danger to life or property. That there passed over the tracks of said defendant at said tower SJ at Sterlington, during said November 1, 1907, more than eight regular passenger trains each way and more than eight regular passenger trains passed each way over said defendant's railroad at said tower in twenty-four hours.

III. That by said acts said defendant thereby violated the provisions of said law and incurred a fine and penalty of One hundred dollars ($100.00), therefor.

Wherefore, plaintiffs demand judgment against said defendant for One hundred dollars ($100.00) and the costs of this action.

WILLIAM S. JACKSON,
Attorney General of the State of New York,
Plaintiff's Attorney, Capitol, Albany, N. Y.

10 STATE OF NEW YORK,
County of Albany, ss:

William S. Jackson, being duly sworn, says, that he is the Attorney General of the State of New York, and one of the plaintiffs in the above-entitled action; that the foregoing complaint is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, he believes it to be true.

W. S. JACKSON.

Subscribed and sworn to before me this 11th day of January, 1908.
WILLIAM V. COOKE,
Notary Public, Albany Co., N. Y.

Answer.

Supreme Court, County of Rockland.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs,
vs.
ERIE RAILROAD COMPANY, Defendant.

The defendant for its answer to the plaintiffs' complaint herein, by George N. Orcutt, its attorney, alleges:

First. That the true name of defendant is "Erie Railroad Company."

11 Second. Defendant admits that at all of the times and days mentioned in the complaint defendant was and now is a railroad corporation organized and existing under the laws of the State of New York, and as such corporation was and now is operating a line of railroad in the State of New York, in Rockland County and other counties, extending from Piermont, N. Y., to Dunkirk, N. Y.; but alleges that the railroad so operated also extends from Jersey City, in the State of New Jersey, to Suffern, in the State of New York, and from Salamanca, in the State of New York, to Marion in the State of Ohio, and elsewhere, passing through the States of New Jersey, New York, Pennsylvania and Ohio, and that at all times mentioned in the complaint the defendant was and now is engaged in interstate commerce and the transportation of persons, goods and merchandise by railroad from one State of the United States to other States of the United States, and to foreign countries.

Third. Defendant further admits that on the first day of November, 1907, said defendant did require and permit one David Henion, a telegraph operator, to be on duty for more than eight hours in said day of twenty-four hours, and to be on duty from 7 o'clock A. M. to 7 o'clock P. M. on that day at said defendant's tower SJ, at Sterlington, in the County of Rockland, N. Y., and that there was on said day no extraordinary emergency caused by accident, fire, flood or danger to life or property; also, that there passed over the tracks of said defendant at said tower SJ, at Sterlington, during said November 1, 1907, more than eight regular passenger trains each way, and more than eight regular passenger trains passed each way over said defendant's railroad at said tower in twenty-four
12 hours. Defendant further admits that among the duties of said Henion on that day was spacing trains by the use of the telegraph under what is known and termed the "Block System" which included reporting trains to another office and to a train dispatcher operating one or more trains under signals. That among the duties on that day also, was the manipulating of levers and interlocking machines on main tracks out on the lines, and that his duties pertained to the movement of cars, engines or trains on defendant's railroad by the use of the telegraph, in reporting trains and in receiving or transmitting train orders.

Fourth. Except as hereinbefore expressly admitted, defendant denies the said complaint and each and every allegation therein contained.

Fifth. Defendant further answering said complaint, alleges that on the day in question the trains which the said Henion was so engaged in spacing and reporting, and the cars, engines and trains in respect to whose movement he was engaged, as set out in the third paragraph hereof, were engaged in interstate commerce, or in the transportation of passengers, persons and property from one State to another, and on that day the said Henion in the performance of his duties was an employee, of the defendant engaged in interstate commerce.

Sixth. Defendant further alleges that Chapter 627 of the Laws of 1907, of the State of New York, entitled "An act to amend the Labor Law relative to the hours of labor of certain employees on railroads," is unconstitutional and void and violates the Constitution of the United States, and particularly the Fifth and Fourteenth Amendments thereof, as applied to the defendant and to the
13 said Henion and other employees of the defendant engaged in the same class of work, in that it, among other things, deprives both the defendant and said employees of liberty and of liberty of contract without due process of law, and also in that it deprives the defendant and said employees of property without due process of law, and, as so applied, violates the Fourteenth Amendment of said Constitution, in that it, among other things, denies to the defendant the equal protection of the laws and denies to the said Henion and to said employees the equal protection of the laws. That said chapter of said act as so applied also violates the Constitution of the State of New York, and particularly Section- I and VI, of Article One thereof, in that it, among other things, deprives the said

defendant and the said Henion and other employees of defendant engaged in the same class of work of rights and privileges secured to other citizens of the State of New York otherwise than by the law of the land or the judgment of their peers; among the rights and privileges being the right to contract as to hours of labor, and the right to property acquired or to be acquired by labor, and the right to contract for labor and to enjoy and have the fruits thereof; and in the further respect that it, among other things, deprives the defendant and the said Henion and other employees of defendant engaged in the same class of work of liberty and property without due process of law, including the liberty to make contracts, in respect to hours of labor, and of the property earned or to be earned by labor, and arbitrarily deprives the defendant of property without due process of law; and further, violates all and each of said constitutional provisions, in that it arbitrarily fixes the added compensation to which the said employee shall be entitled for each
14 hour of labor in excess of eight hours in any one day, and thereby deprives the defendant and the said Henion, and each and all of defendant's employees engaged in the same class of work as the said Henion, of liberty of contract in respect to the amount of such wages for such extra hours. Defendant further alleges that such Act is not a valid exercise of the police power of the State of New York, and is not in the interest of public health, public morals, or of public order; that it draws an arbitrary distinction between persons engaged in the business in which the said Henion was engaged and other employees engaged in other branches of railroad work, and between railroad corporations and common carriers and other classes of employers; that the classification of the employees, as well as the classification of the employers, is arbitrary and does not stand upon a reasonable basis. Defendant further alleges that the work done by said Henion and other employees of defendant engaged in the same class is performed under safe and sanitary conditions and doesn't impair the health or efficiency of such said Henion or of said employees.

Seventh. Defendant for a seventh and further answer to the complaint herein, alleges that by the Constitution of the United States the Congress of the United States is given the power to regulat commerce with foreign nations and among the several States; that by Chapter 2939 of the Acts of the 59th Congress of the United States, approved March 4, 1907, the Senate and House of Representatives of the United States of America in Congress by such Act undertook to determine the hours of labor of employees of railroad corporations engaged in interstate commerce, and, among other things, authorized the employment of train operators, train dispatch-
ers, and other employees, who, by the use of the telegraph or
15 telephone, dispatches, reports, transmits, receives or delivers orders pertaining to or affecting train movements; to be required and permitted to be or remain on duty for nine hours in any twenty-four hour period in all towers, offices, places and stations continuously operated night and day, and for a period of thirteen hours in all towers, offices and stations operated only during the day time, except in cases of emergency, when such employees may

be permitted to be and remain on duty for four additional hours in a twenty-four hour period on not exceeding three days in any week; with a further proviso that the Interstate Commerce Commission may, after a full hearing in a particular case and for good cause shown, extend the period within which a common carrier shall comply with the provisions of this proviso as to such case; and it was provided that such Act shall take effect March 4, 1908. Defendant alleges that the Congress of the United States has the exclusive power to regulate commerce between the States, and that if the regulation of the hours of labor of employees engaged in interstate commerce be a regulation of interstate commerce and within the jurisdiction of the Congress of the United States, which the defendant for the purposes of this action alleges it to be, then the jurisdiction of the Congress is exclusive and Chapter 627 of the Laws of 1907 is in excess of the power of the Legislature of the State
16 of New York and unconstitutional and void, in that it is an attempt to regulate commerce between the States.

Wherefore, defendant demands judgment that the complaint be dismissed with costs.

GEO. N. ORCUTT,
Defendant's Attorney.

Office and Post Office Address, 11 Broadway, Borough of Manhattan, New York City.

Decision; Findings; Conclusions of Law.

At a Trial Term of the Supreme Court of the State of New York, Held at the Court House at New City, in the County of Rockland, April 6th, 1908.

Present: Hon. Martin J. Keogh, Justice Presiding.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs,
vs.
THE ERIE RAILROAD COMPANY, Defendant.

The above entitled action being on the calendar of the above term of this Court and a jury trial having been waived, and the parties having stipulated that the evidence to be taken before the presiding Justice at his chambers in New Rochelle, with the same force and effect as if heard at the Court House in the County of Rock-
17 land, and upon said stipulation an order having been duly entered and in pursuance thereof the parties having duly appeared at said chambers of the presiding Justice at New Rochelle, and the evidence having been taken June 27th, 1908, and the parties by their respective counsel having been heard and a trial duly had, and the case having been finally submitted to the Court October 3d, 1908, I, the undersigned, the Justice before whom said trial was had, do hereby find and decide as matters of fact and conclusions of law as follows:

Findings of Fact.

That on November 1st, 1907, and at all the times mentioned in the complaint and at the commencement of this action, the defendant was a corporation organized and existing under the laws of the State of New York and as such was operating a line of railroad in the State of New York, in Rockland County and other counties extending from Piermont, N. Y., to Dunkirk, N. Y.

2.

That on said 1st day of November, 1907, said defendant did require and permit one David Henion, a telegraph operator, who was spacing trains by the use of the telegraph under what is known and termed the block system, and who was at said time, reporting trains to another office and offices, and to a train dispatcher or dispatchers operating one or more trains under signals and telegraph or telephone levermen who were manipulating interlocking machines in railroad yards and on main tracks out on the line and train dispatchers in defendant's service, whose duties pertained to the movement of cars, engines and trains on defendant's railroad by the use of the telegraph in dispatching and reporting trains and re-
18 ceiving and transmitting train orders, to be on duty for more than eight hours in said day of twenty-four hours, and to be on duty from seven o'clock A. M. to seven o'clock P. M. on said first day of November, 1907, at said defendant's tower SJ at Sterlington, in said County of Rockland, N. Y., there being on said day no extraordinary emergency caused by accident, fire, flood or danger to life or property.

3.

That there passed over the tracks of said defendant at said tower SJ at Sterlington, during said November 1, 1907, more than eight regular passenger trains each way and more than eight regular passenger trains passed each way over said defendant's railroad at said tower in twenty-four hours.

4.

That upon said trains were passengers whose journey commenced and ended in the State of New York and did not extend into any other State, and some of said trains were local trains carrying passengers and property from one point to another in the State of New York.

Conclusions of Law.

1. That said defendant on said first day of November, 1907, violated the Labor Law of the State of New York, as amended by Chapter 627 of the Laws of 1907, and Section 7*a* of said law.
2. That by said acts and violation said defendant incurred the

fine and penalty of $100 and plaintiff is entitled to judgment against defendant for $100 as such fine.

3. That said Section 7*a* of the Labor Law, Chapter 627 of
19 the Laws of 1907, as valid and its provisions do not violate and are not in conflict with the Constitution of the United States or the Constitution of the State of New York.

4. Judgment is therefore ordered accordingly with costs.

M. J. KEOGH, *J. S. C.*

Judgment.

Supreme Court, Rockland County.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant.

The above-entitled action having been commenced in this Court by service of summons and complaint, and having been duly noticed and placed on the calendar of the term held at the Court House at New City, Rockland County, N. Y., commencing April 6th, 1908, and an order having been made upon stipulation of the parties that the evidence be taken and trial had before the presiding Justice of said term at his chambers in New Rochelle, N. Y., with the same force and effect as if heard at the Court House in the County of Rockland, and the evidence having been taken June 27, 1908, and the parties by their respective counsel having been duly heard, D. F. Searle, appearing as counsel for the plaintiff and George N.
20 Orcutt for the defendant, and having been finally submitted October 3, 1908, and the Court having duly rendered its decision in writing in favor of the plaintiff and against the defendant, which decision findings of fact and conclusions of law having been duly signed and filed.

Now, on motion of William S. Jackson, Attorney-General of the State of New York, for the plaintiff,

It is adjudged that the said plaintiff recover of the said defendant, the Erie Railroad Company, One hundred dollars ($100) as a fine and penalty together with One hundred thirty-five and 90/100 dollars ($135.90) costs of said action as taxed, amounting in all to the sum of $235.90 and that plaintiff have execution therefor.

CYRUS M. CRUM.

Defendant's Requests to Find Facts and Conclusions of Law as Marked "Found" or "Refused" by Justice Keogh.

Supreme Court, County of Rockland.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant.

The defendant's attorney herewith submits to the Court, in writing, a statement of the facts, which he deems established by the evi-

dence in the above-entitled action, and of the rulings upon
21 questions of law, which he desires the Court to make, which statement is in the form of distinct propositions of law, or of fact, or both, separately stated and numbered, and defendant's attorney hereby requests the Court to find each proposition separately. Said requests to find are hereto atached.

Dated, this 3d day of October, 1908.

Respectfully submitted,

GEORGE N. ORCUTT,
Attorney for Defendant,
50 *Church Street, New York City, N. Y.*

Findings of Fact.

First. Chapter 627 of the Laws of New York, for the year 1907, entitled "An Act to Amend the Labor Law Relative to Hours of Labor of Certain Employees on Railroads," which became a law July 19th, 1907, with the approval of the Governor, and took effect October 1st, 1907, reads as follows:

"The People of the State of New York, represented in Senate and Assembly, do enact as follows:

"SECTION 1. Chapter four hundred and fifteen of the laws of eighteen hundred and ninety-seven, entitled "An act in relation to labor, constituting chapter thirty-two of the general laws," is hereby amended by adding a new section after section seven thereof, to be section seven-*a*, to read as follows:

"SEC. 7*a*. Regulation of hours of labor of block system telegraph and telephone operators and signalmen on surface, subway
22 and elevated railroads.—The provisions of section seven of this chapter shall not be applicable to employees mentioned herein. It shall be unlawful for any corporation or receiver, operating a line of railroad, either surface, subway or elevated, in whole or in part, in the state of New York, or any officer, agent or representative of such corporation or receiver to require or permit any telegraph or telephone operator who spaces trains by the use of the telegraph or telephone under what is known and termed the "block system" (defined as follows): Reporting trains to another office or offices or to a train dispatcher operating one or more trains under signals, and telegraph or telephone levermen who manipulate interlocking machines in railroad yards or on main tracks out on the lines or train dispatchers in its service whose duties substantially, as hereinbefore set forth, pertain to the movement of cars, engines or trains on its railroad by the use of the telegraph or telephone in dispatching or reporting trains or receiving or transmitting train orders as interpreted in this section, to be on duty for more than eight hours in a day of twenty-four hours, and it is hereby declared that eight hours shall constitute a day of employment for all laborers or employees engaged in the kind of labor aforesaid; except in cases of extraordinary emergency caused by accident, fire, flood or danger to life or property and for each hour of labor so performed in any one

day in excess of such eight hours, by any such employee, he
23 shall be paid in addition at least, one-eighth of his daily compensation. Any person or persons, company or corporation, who shall violate any of the provisions of this section, shall, on conviction, be fined in the sum not less than one hundred dollars, and such fine shall be recovered by an action in the name of the state of New York, for the use of the state, which shall sue for it against such person, corporation or association violating this act, said suit to be instituted in any court in this state having appropriate jurisdiction. Such fine, when recovered, as aforesaid, shall be paid without any deduction whatever, one-half thereof to the informer, and the balance thereof to be paid into the free school fund of the state of New York. The provisions of this act shall not apply to any part of a railroad where not more than eight regular passenger trains in twenty-four hours pass each way; provided, moreover, that where twenty freight trains pass each way generally in each twenty-four hours then the provisions of this act shall apply, notwithstanding that there may pass a less number of passenger trains than hereinbefore set forth, namely, eight.

"SEC. 2. This act shall take effect October first, nineteen hundred and seven."

Found.

Second. The defendant, Erie Railroad Company, at all of the times and days mentioned in the complaint, and hereinafter mentioned, was, and now is, a railroad corporation organized and existing under the laws of the State of New York, and as such corporation was, and now is, operating a line of railroad in the State
24 of New York in Rockland County and other counties, extending from Piermont, New York, to Dunkirk, New York, and that the railroad so operated also extends from Jersey City, in the State of New Jersey, to Suffern, in the State of New York, and from Salamanca, in the State of New York, through the State of Pennsylvania, to Marion, in the State of Ohio and elsewhere, the main line crossing from the State of New York into the State of Pennsylvania and back again into the State of New York between Suffern, New York, and Salamanca, New York, and passing through the States of New Jersey, New York, Pennsylvania, Ohio, Indiana, and Illinois to Chicago; and that at all times mentioned in the complaint or hereinafter mentioned, the defendant was, and now is, engaged in interstate commerce, and the transportation of persons, goods and merchandise by railroad from one State of the United States to other States of the United States.

Found.

Third. That on the first day of November, 1907, said defendant Erie Railroad Company, required and permitted one David Henion, a telegraph operator, who was spacing trains by the use of the telegraph and telephone under what is known and termed the "block system" defined in section 7*a* of the Labor Law of the State of New York, to be on duty for more than eight hours in said day of twenty-four hours, and to be on duty from seven o'clock A. M., to seven o'clock P. M., on that day at said defendant's tower SJ, at Sterling-

ton, in the County of Rockland, New York, and that there was on said day no extraordinary emergency caused by accident, fire, flood, or danger to life or property; also that there passed over the tracks of said defendant at said tower, SJ, at Sterlington, during
25 said November 1st, 1907, more than eight regular passenger trains each way and more than eight regular passenger trains passed each way over said defendant's railroad at said tower in twenty-four hours.

Found.

Fourth. That among the duties of said David Henion on said November 1st, 1907, was spacing trains by the use of the telegraph under what is known and termed the "block system" which included reporting trains to another office, and to a train dispatcher operating one or more trains under signals, and among his duties on that day, also, was the manipulating of levers and interlocking machines on main tracks out on the lines, and that his duties pertained to the movement of cars, engines or trains on defendant's railroad by use of the telegraph, in reporting trains and in receiving or transmitting train orders.

Found.

Fifth. That David Henion, a telegraph and telephone operator, engaged in spacing trains by the use of the telegraph and telephone under what is known and termed the "block system" defined in Section 7*a* of the Labor Law of the State of New York, in the Sterlington tower of the Erie Railroad Company, in the County of Rockland, in the State of New York, between seven o'clock A. M. and seven o'clock P. M., November 1st, 1907, in the performance of his duties, performed the following movements, which consumed the following times, respectively:

Was called on the telephone from adjoining towers or called up himself thirty-five times, occupying twenty-eight minutes and thirty-five seconds.

Sent or received fifty-nine telegraph messages, occupying one hour and three minutes.

26 Answered or pushed a button, which rings bells in his own tower and in the adjoining tower, either asking for information which is given by certain signals of these bells, or replying to information that was asked for, thirty-six times, occupying eight minutes and thirty-five seconds.

Got up and pushed or pulled a lever eighty times, occupying one hour, twenty-three minutes and ten seconds.

Twenty-one other movements; such as going down in the basement of the tower and fixing his fire, stepping to the bottom of the tower, and either communicating with the passing train, or handing the passing train a telegram, rather than stopping the train handing up the message as the caboose goes by, or giving the conductor some verbal instruction or asking him some question, occupying fifty-six minutes and twenty seconds.

The total time occupied in the foregoing movements was three hours fifty-nine minutes and forty seconds out of the twelve hour day.

On that day there were fourteen eastbound and twelve westbound

passenger trains, and twelve eastbound and fifteen westbound freight trains, which passed the Sterlington tower during said twelve hours.

Found.

Sixth. The duties of a telegraph or telephone operator, who spaces trains by the use of the telegraph or telephone under what is known and termed the "block system," defined in Section 7*a* of the Labor Law of the State of New York, in block towers, and the principal class of persons in whose favor this statute operates, consist along the railroad of the Erie Railroad Company in receiving and sending telegraph messages, receiving and sending telephone messages, listening to bells which are rung by others, pushing buttons which
27 ring bells in other towers, operating levers which move switches or semaphore bars, observing the number of the locomotive passing the tower and making a record of it, and observing whether the trains passing the tower are broken in two, recording upon his block sheet the position of trains approaching or departing from his block tower, and occasionally carrying a message down from the tower and delivering it to a trainman, and in being in attendance, waiting for signals.

Found.

Seventh. Telegraph or telephone operators who space trains by the use of the telegraph or telephone under what is known and termed the "block system," defined in Section 7*a* of the Labor Law of the State of New York, employed by the Erie Railroad Company are furnished with a train block sheet, as was said David Henion on the day in question, upon which they are ordered to record the position of trains and upon which record they are ordered to rely to determine the position of trains, and not to depend upon memory as to such position.

Found.

Eighth. The rules of defendant prescribe that the normal position of signals, operated by an employee in a block tower, to whom Section 7-*a* of the Labor Law of the State of New York, applies shall be at danger, and if the operator has restored the signals to their normal position after the passage of the preceding train and does not give an affirmative signal to the approaching train to proceed, the approaching train should not proceed, or under certain conditions may proceed with caution.

Found.

28 Ninth. A telegraph or telephone operator, who spaces trains by use of the telegraph or telephone under what is known and termed the "block system," defined in Section 7-*a* of the Labor Law of the State of New York, in block towers of the Erie Railroad Company is not ordinarily engaged in the performance of duties pertaining to his work more than about one-third of the time, except as his duty requires him to be in attendance at the scene of his work, and to be in a sufficiently attentive state to hear a signal calling him, whether by telephone bell, telegraph instrument, signal bell, or train whistle.

Refused.

Tenth. The men employed by defendant as operators in towers

prior to their employment are required to submit to a physical examination by a physician, and are instructed in the nature of their duties, and the method of performing them.

Found.

Eleventh. Employees of the Erie Railroad Company working in block towers, and to whom Section 7-*a* of the Labor Law of the State of New York applies, including said David Henion on the day in question, are in places of personal safety. The block towers provided for them to work in are sanitary, light, warm and comfortably roomy, chairs are provided for them, and they are able to do some of their work without leaving their chairs.

Found.

Twelfth. The performance of the duties required of a telegraph or telephone operator, who spaces trains by the use of the telegraph or telephone under what is known and termed the "block system," as defined in Section 7-*a* of the Labor Law of the State of New York, and performed by David Henion on the first day of November, 1907, at the said Sterlington tower of the Erie Railroad
29 Company for a period of twelve hours, was, and is, not so arduous or exhausting mentally or physically as to incapacitate the said David Henion, or such telegraph or telephone operator from performing such duties during the period of twelve hours with safety to the public.

Refused.

Thirteenth. There is no peculiar mental or physical hardship connected with the work of a telegraph or telephone operator, who spaces trains by the use of the telegraph or telephone under what is known and termed the "block system" as defined in Section 7-*a* of the Labor Law of the State of New York, such as to put them in a class by themselves and entitle them to a limitation of the hours of labor to eight in each day.

Refused.

Fourteenth. The Erie Railroad Company, and several other railroads operating in the State of New York, have in use what is known as the "block system," as defined in Section 7-*a* of the Labor Law of the State of New York, and up to about October 1st, 1907, the operators in a majority of the block towers of the defendant and the N. Y. C. & H. R. R. worked twelve hours a day.

Found.

Fifteenth. The effect of Chapter 627 of the Laws of 1907, adding Section 7-*a* to the Labor Law of the State of New York was materially to increase the cost to the Erie Railroad Company of operating the "Block System."

Found.

Sixteenth. Chapter 415 of the Laws of the State of New York, for the year 1897, entitled, "An Act in relation to labor, constituting chapter thirty-two of the general laws," which became
30 a law May 13th, 1897, with the approval of the Governor, and which took effect on the first day of June, 1897, provides in part as follows, at Section 7 thereof:

"SEC. 7. Regulation of hours of labor on steam surface and ele-

vated railroads.—Ten hours labor performed within twelve consecutive hours, shall constitute a legal day's labor in the operation of steam surface and elevated railroads owned and operated within this state, except where the mileage system of running trains is in operation. But this section does not apply to the performance of extra hours of labor by conductors, engineers, firemen and trainmen in case of accident or delay resulting therefrom. For each hour of labor performed in any one day in excess of such ten hours, by any such employee, he shall be paid in addition at least one-tenth of his daily compensation"

* * * * * * *

Found.

Seventeenth. Chapter 523 of the Laws of the State of New York for the year 1907, entitled, "An Act to amend section three hundred and eighty-four-*h* of the penal code, relative to hours of labor to be required of employees of a corporation operating a line of railroad thirty miles in length, or over," which became a law June 17th, 1907, with the approval of the Governor, and which took effect March 4th, 1908, provides in part as follows, and applies to "any person or corporation."

"SECTION 1. Subdivision four of section three hundred and eighty-four-*h* of the penal code is hereby amended so as to read as follows:

"4. Who shall require or permit any employee engaged in
31 or connected with the movement of any train of a corporation operating a line of railroad of thirty miles in length, or over, in whole or in part within this state, to remain on duty more than sixteen consecutive hours; or to require or permit any such employee who has been on duty sixteen consecutive hours to go on duty without having had at least ten hours off duty; or to require or permit any such employee who has been on duty sixteen hours in the aggregate in any twenty-four hour period, to continue on duty or to go on duty without having had at least eight hours off duty within such twenty-four hour period; except when by casualty occur-ing after such employee has started on his trip, or by unknown casualty occur-ing before he started on his trip, and except when by accident or unexpected delay of trains scheduled to make connection with the train on which such employee is serving, he is prevented from reaching his terminal; is guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than five hundred nor more than one thousand dollars for each offense."

Found.

Eighteenth. On November 1st, 1907, a majority of the trains which the said David Henion was engaged in spacing and reporting, were engaged in interstate commerce, or in the transportation of passengers, persons or property from one State to another.

Found.

Eighteen and one-half. That on November 1, 1907, said
32 David Henion in the performance of his duties was an employee of the defendant engaged in interstate commerce.

Refused.

Nineteenth. That the Congress of the United States has passed an act, approved by the President on March 4th, 1907, (Chapter 2939 of the Acts of the Fifty-ninth Congress), which went into effect March 4th, 1908, which, in regard to common carriers engaged in interstate commerce, provides in part as follows:

"SEC. 2. That it shall be unlawful for any common carrier, its officers or agents, subject to this Act to require or permit any employee subject to this Act to be or remain on duty for a longer period than sixteen consecutive hours, and whenever any such employee of such common carrier shall have been continuously on duty for sixteen hours he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such employee who has been on duty sixteen hours in the aggregate in any twenty-four hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty: Provided, That no operator, train dispatcher, or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four hour period in all towers offices, places, and stations, continuously operated night and day, nor for a longer
33 period than thirteen hours in all towers, offices, places, and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four hour period on not exceeding three days in any week; Provided further, The Interstate Commerce Commission may after full hearing in a particular case and for a good cause shown extend the period within which a common carrier shall comply with the provisions of this proviso as to such case."

Found.

Twentieth. Chapter 627 of the Laws of 1907 of the State of New York, which added Section 7-*a* to the Labor Law, as applied to the Erie Railroad Company, and to the said David Henion and other employees of the defendant engaged in the same work, deprives both the defendant, Erie Railroad Company and said employees of liberty of contract without due process of law.

Refused.

Twenty-first. Chapter 627 of the Laws of 1907, of the State of New York, which added Section 7-*a* to the Labor Law as applied to the Erie Railroad Company and to the said David Henion and other employees of the defendant engaged in the same work, deprives the defendant and said employees of property without due process of law.

Refused.

Twenty-second. Chapter 627 of the Laws of 1907 of the State of New York, which added Section 7-*a* to the Labor Law as applied to the Erie Railroad Company and to the said David Henion and other employees of the defendant engaged in the same work, denies

to the defendant, Erie Railroad Company and to said David
34 Henion and to said employees, the equal protection of the laws.

Refused.

Conclusions of Law.

First. Chapter 627 of the Laws of 1907 of the State of New York, entitled, "An Act to amend the Labor Law relative to the hours of labor of certain employees on railroads," which added Section 7-*a* to the Labor Law of the State of New York, as applied to the defendant Erie Railroad Company, and to the said David Henion, and to other employees of the defendant engaged in the same work, is void, in that it, as so applied, is repugnant to, and violates, the Fifth Amendment of the Constitution of the United States.

Refused.

Second. That Chapter 627 of the Laws of 1907 of the State of New York, entitled, "An Act to amend the Labor Law relative to the hours of labor of certain employees on railroads," which added Section 7-*a* to the Labor Law of the State of New York, as applied to the defendant Erie Railroad Company, and to the said David Henion, and to other employees of the defendant engaged in the same work, is void, in that it as so applied, is repugnant to, and violates the Fourteenth Amendment of the Constitution of the United States.

Refused.

Third. That Chapter 627 of the Laws of 1907, of the State of New York, entitled, "An Act to amend the Labor Law relative to the hours of labor of certain employees on railroads," which added Section 7-*a* to the Labor Law of the State of New York, as applied to the defendant Erie Railroad Company, and to the said David
35 Henion, and to other employees of the defendant engaged in the same work is void, in that it, as so applied, is repugnant to and violates Section 1 of Article 1 of the Constitution of the State of New York.

Refused.

Fourth. That Chapter 627 of the Laws of 1907 of the State of New York, entitled "An Act to amend the Labor Law relative to the hours of labor of certain employees on railroads," which added Section 7-*a* to the Labor Law of the State of New York, as applied to the defendant Erie Railroad Company, and to the said David Henion, and to other employees of the defendant engaged in the same work, is void, in that it, as so applied, is repugnant to, and violates, Section 6 of Article 1 of the Constitution of the State of New York.

Refused.

Fifth. That Chapter 627 of the Laws of 1907 of the State of New York, entitled, "An Act to amend the Labor Law relative to the hours of labor of certain employees on railroads," which added Section 7-*a* to the Labor Law of the State of New York, is void as applied to the regulation of the hours of labor of David Henion on

November 1st, 1907, at Sterlington tower, as an employee of the Erie Railroad Company, as a regulation of the hours of labor of an employee of a railroad company engaged in interstate commerce and who is himself engaged in spacing trains by the "block system," which trains were engaged in interstate commerce, in view of the fact that the act of Congress, entitled, "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907 (Chapter 2939 of the Acts of the Fifty-ninth Congress)
36 regulates and fixes the hours of such labor, as Henion was then performing, to nine in each day.

Refused.

Sixth. I hereby direct that judgment be entered hereon in favor of the defendant, dismissing the complaint with costs.

Refused.

Found and settled as marked.

MARTIN J. KEOGH, *J. S. C.*

Defendant's Exceptions.

Supreme Court, Rockland County.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant.

Please take notice, that:

The above-named defendant, Erie Railroad Company, hereby excepts to the decision of the Court herein, Mr. Justice Martin J. Keogh, presiding, filed and entered in the office of the Clerk of the County of Rocklaud, on or about the 3d day of December, 1908, in the following particulars:

First. To the finding of fact numbered 2, on the ground that there is no evidence tending to support it.

37 Second. To the finding of fact numbered 4, on the ground that there is no evidence tending to support it.

Third. To the conclusion of law numbered 1.

Fourth. To the conclusion of law numbered 2.

Fifth. To the conclusion of law numbered 3.

Sixth. To the conclusion of law numbered 4.

Seventh. To the refusal of the Court to find as requested in paragraph numbered Ninth under "Findings of Fact," of the requests submitted by said defendant.

Eighth. To the refusal of the Court to find as requested in paragraph numbered Twelfth under "Findings of Fact," of the requests submitted by said defendant.

Ninth. To the refusal of the Court to find as requested in paragraph numbered Thirteenth under "Findings of Fact," of the requests submitted by said defendant.

Tenth. To the refusal of the Court to find as requested in para-

graph numbered 18½ under "Findings of Fact," of the requests submitted by said defendant.

Eleventh. To the refusal of the Court to find as requested in paragraph numbered Twentieth under "Findings of Fact," of the requests submitted by said defendant.

Twelfth. To the refusal of the Court to find as requested in paragraph numbered Twenty-first under "Findings of Fact," of the requests submitted by said defendant.

Thirteenth. To the refusal of the Court to find as requested in paragraph numbered Twenty-second under "Findings of Fact," of the requests submitted by said defendant.

38 Fourteenth. To the refusal of the Court to find as requested in paragraph numbered First under "Conclusions of Law," of the requests submitted by said defendant.

Fifteenth. To the refusal of the Court to find as requested in paragraph numbered Second under "Conclusions of Law," of the requests submitted by said defendant.

Sixteenth. To the refusal of the Court to find as requested in paragraph numbered Third under "Conclusions of Law," of the requests submitted by said defendant.

Seventeenth. To the refusal of the Court to find as requested in paragraph numbered Fourth under "Conclusions of Law," of the requests submitted by said defendant.

Eighteenth. To the refusal of the Court to find as requested in paragraph numbered Fifth under "Conclusions of Law," of the requests submitted by said defendant.

Nineteenth. To the refusal of the Court to find as requested in paragraph numbered Sixth under "Conclusions of Law," of the requests submitted by said defendant.

Dated, New York, N. Y. December 16th, 1908.

GEORGE N. ORCUTT,
Attorney for Defendant.
50 *Church Street, New York City*

To the Clerk of the County of Rockland and William S. Jackson, Esq., Attorney General, Attorney for Plaintiff.

39 *Stipulation Waiving Certification.*

Pursuant to Section 3301 of the Code of Civil Procedure, it is hereby stipulated that the foregoing consists of true and correct copies of the notice of appeal, the judgment roll, and case and exceptions as settled, and the whole thereof, now on file in the office of the Clerk of the County of Rockland, and certification
40 thereof by the Clerk, pursuant to Section 1353, is hereby waived.

Dated, April —, 1909.

EDWARD R. O'MALLEY,
Attorney for Plaintiff-Respondent.
GEO. N. ORCUTT,
Attorney for Defendant-Appellant.

Affidavit of No Opinion.

Supreme Court, Rockland County, New York.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant.

STATE OF NEW YORK,
County of New York, ss:

George N. Orcutt, having been duly sworn, deposes and says: I am the attorney for the defendant in the above-entitled action; no opinion was given by the Justice of the Supreme Court before whom this action was tried.

GEORGE N. ORCUTT.

Sworn to before me this 8th day of January, 1909.

A. L. TRAVIS,
Notary Public, No. 75, Kings County.

Certificate filed in New York County.

41 Supreme Court, Rockland County.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiff,
against
ERIE RAILROAD COMPANY, Defendant.

The above named defendant, Erie Railroad Company, having appealed to the Appellate Division of the Supreme Court for the Second Judicial Department from the judgment entered herein in the office of the Clerk of the County of Rockland, on the 3rd day of December, 1908, in favor of the plaintiff and against the defendant for the sum of $235.90, and the said appeal having been argued and the said Appellate Division having by an order dated the 10th day of December, 1909, and entered on the 10th day of December 1909, reversed the said judgment so appealed from and granted a new trial, with costs to abide the event, it is, on motion of George N. Orcutt, attorney for the defendant,

Adjudged, that the said judgment entered in the above entitled action in the office of the Clerk of the County of Rockland be and the same hereby is reversed, and a new trial granted costs to abide the event of the action.

Judgment, January 10th, 1910.

CYRUS M. CRUM, *Clerk.*

(Endorsed:)

SIR: Please take notice that judgment of reversal of which the within is a true copy was duly entered and filed in the Office of the County Clerk of the County of Rockland on January 10th, 1910.

Dated, N. Y., January 10, 1910.

GEORGE N. ORCUTT,
Att'y for Defendant-Appellant,
50 Church St., New York.

To Edward R. O'Malley, Attorney-General, Att'y for Plaintiff-Respondent, Albany, N. Y.

42 *Order Filing Case in Appellate Division.*

Pursuant to Section 1353 of the Code of Civil Procedure, it is

Ordered, that the foregoing printed record be filed in the office of the Clerk of the Appellate Division of the Supreme Court in the Second Judicial Department.

Dated, April —, 1909.

MARTIN J. KEOGH, *J. S. C.*

Order of Appellate Division.

At a term of the Appellate Division of the Supreme Court held in and for the Second Judicial Department at the Borough of Brooklyn, on the 10th day of December, 1909.

Present:

Hon. Michael H. Hirschberg, Presiding Justice.
Hon. John Woodward,
Hon. Joseph A. Burr,
Hon. Adelbert P. Rich,
Hon. Nathan L. Miller,
Justices.

THE PEOPLE OF THE STATE OF NEW YORK, Respondents,
against
ERIE RAILROAD COMPANY, Appellant.

Order of Reversal on Appeal from Judgment.

The above-named Erie Railroad Company, the defendant in this action, having appealed to the Appellate Division of the Supreme Court from a judgment of the Supreme Court, entered in the office of the Clerk of the County of Rockland on the 3d day of December,

43 1908, appeal having been argued by Mr. George N. Orcutt, of counsel for the appellant and by Mr. Edward R. O'Malley,

Attorney-General, of counsel for the respondent, and due deliberation having been had thereon,

It is hereby ordered and adjudged that the judgment so appealed from be and the same is hereby reversed, and new trial granted, costs to abide the event.

Enter.

(Sg.) M. H. HIRSCHBERG, *P. J.*

Opinion of Appellate Division.

Supreme Court, Appellate Division, Second Judicial Department.

Hirschberg, P. J.; Woodward, Burr, Rich, and Miller, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, Respondents,
against
ERIE RAILROAD COMPANY, Appellant.

Appeal by the Defendant from a Judgment of the Supreme Court, Entered in the Clerk's Office of Rockland County on December 3, 1908, in Favor of the Respondents.

George N. Orcutt (George F. Brownell with him on the brief), for the appellant.

Edward R. O'Malley, Attorney-General (Edward H. Letchworth with him on the brief), for the respondent.

MILLER, *J.*:

This is an action to recover a fine for an alleged violation of Section 7-*a* of the Labor Law, added by Chapter 627 of the Laws of 1907, which became a law July 19th, 1907, and took effect October 1st, 1907. The alleged violation consisted in requiring or permitting, on November 1st, 1907, a telegraph operator in
44 charge of a block signal station to be on duty more than eight hours in twenty-four.

The validity of the Act is challenged on several grounds, but, in my view of the case, it is necessary to consider but one. Congress passed an Act covering the same subject, which was approved on March 4th, 1907. So far as material to the question before us, that Act provided: "No operator, train dispatcher, or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four-hour period in all towers, offices, places and stations continuously operated night and day." The Act provided that it should not take effect until one year after its passage. The defendant is an interstate carrier, and the work of the particular operator in question had to do with interstate trains.

I shall assume, for the purposes of this discussion—indeed my own view is, that apart from the question now to be discussed,

the State has the undoubted right in the exercise of the police power to provide for the welfare and safety of the public by limiting the hours of labor of railroad employees whose work involves the safety of the public, and that the discrimination between different classes of employees made by the statute is not arbitrary but rests on a reasonable basis. But there can be no doubt that, so far as interstate commerce may be affected, the jurisdiction of the State and the Federal Legislature is concurrent; and that is the position taken by the learned Attorney General. However, he asserts that the Acts of Congress and the State Legislature may both be effective even where interstate commerce is involved, but there is no inconsistency between the two, and that in any event the Act of Congress was not in force when the State Act was passed or when the
45 offense charged was committed. It is not questioned that if Congress sees fit to deal with a subject over which it and the State Legislature have concurrent jurisdiction, its action is supreme and exclusive. It is unnecessary to cite authority in support of that proposition. It is based on an express provision of the Federal Constitution and is required by the necessities of the case for, obviously, it would not do to have one rule prescribed by Congress and another by the State. The latter must yield to the former. Now, before the act in question was passed, Congress had passed an act covering precisely the same ground, limiting the time that the class of employees in question should be required or permitted to work to nine hours out of twenty-four. It is contended that, as only a maximum time was prescribed, an act limiting the time to a shorter period is not inconsistent therewith. But that contention loses sight of the fundamental question upon which the exercise of jurisdiction, which the State Legislature possesses concurrently with Congress, depends. Where the jurisdiction of Congress is exclusive, non-action by it shows an intention on its part that the subject shall be free from restriction. Where jurisdiction is concurrent, non-action shows an intention to leave the matter to be dealt with by the State Legislatures; but action, which prescribes the rule to govern a particular case, shows an intention of Congress to deal with that case to the exclusion of the State Legislatures, and any different rule prescribed by the latter is inconsistent therewith. The cases cited by the Attorney-General do not support his contention. Sinnot v. Davenport, 22 How. 227, decides exactly to the contrary. In that case, Mr. Justice Nelson did say: "We agree, that in the application of this principle of supremacy of an act of Congress in a case where the State law is but the exercise of a reserved power, the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together." But two acts, covering the same subject and pre-
46 scribing different rules, are "repugnant" within the meaning of that word as used in the above quotation, as is shown by a uniform line of decisions of the United States Supreme Court. (See Sherlock v. Alling, 93 U. S. 99; Covington, etc., Bridge Co. v. Kentucky, 154 U. S. 204, and the many cases cited by Mr. Justice Brown.) The case of Reid v. Colorado 187 U. S. 137, relied upon

by the Attorney-General, was decided upon the ground that the Act of Congress did not cover the whole subject dealt with by the State law; but the rule was again iterated that action by Congress excludes action by the States covering the same ground.

It is true that, by its express terms, the Act of Congress in question did not go into effect until March 4, 1908. It is stated in the brief of the respondent, by inadvertance no doubt, that the State law was in force when it was passed. While an act may not go into force until a given date it may be effective for certain purposes before that date. It becomes a law when passed, the operation of which, however, is suspended for a given period. As a declaration of the purpose and intention of Congress, it was as effective when passed as when it went into effect a year later. By it, Congress declared its purpose to enter the field which had theretofore been left to the States, and its view that a maximum of nine hours of labor in twenty-four was the proper rule for the class of employees in question; and it suspended the operation of that rule for a year, obviously to allow the interstate carriers affected to readjust their force to conform to the law. Action by Congress on March 4, 1907, cannot be regarded as nonaction until March 4, 1908, because Congress for obvious reasons saw fit to postpone the operation of the rule, which it declared to be the proper rule, for a year. Our attention is called to two decisions in other States upon the precise point, which seem to us to be sound. (State v. Missouri Pac. Ry. Co., 111 S. W. Rep. 500; State v. Chicago M. & St. P. Ry. Co., 117 N. W. Rep. 686.)

47 It is next urged that the Federal Act in question is itself unconstitutional for the reason that it applies to both interstate and intrastate commerce. (See Employers' Liability Cases, 207 U. S., 463.) But that requires a strained and narrow construction of the act in question which might be justified to sustain, but never to defeat, a law. Doubtless the employee in question had to do with the movements of both interstate and intrastate trains. None the less, the Federal Act is exclusive, for jurisdiction once conceded, the superior power must be supreme.

Judgment should be reversed and a new trial granted, costs to abide the event.

Stipulation Waiving Certification.

Supreme Court, Rockland County.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs-Appellants,
against
ERIE RAILROAD COMPANY, Defendant-Respondent.

It Is Hereby Stipulated, pursuant to section 3301 of the Code of Civil Procedure, that the foregoing consists of true and correct copies of the notices of appeal, the judgment-roll, case and exceptions as settled, and order of the Appellate Division, and judgment and of

the whole thereof, now on file in the office of the Clerk of the County of Rockland, and certification thereof by the clerk, pursuant to section 1353, is hereby waived.

Dated, January 28, 1910.

GEORGE N. ORCUTT,
Attorney for Defendant.
EDWARD R. O'MALLEY,
Attorney General, Attorney for Plaintiff.

48 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs-Appellants,
against
ERIE RAILROAD COMPANY, Defendant-Respondent.

It is hereby stipulated on behalf of the People of the State of New York and pursuant to the provisions of § 190 of the Code of Civil Procedure, that upon the affirmance of the order of the Appellate Division by the Court of Appeals judgment absolute shall be rendered against said appellants.

Dated January 17, 1910.

EDWARD R. O'MALLEY,
Attorney General.

49 HISCOCK, *J.:*

If section 7*a* of the Labor Law, above quoted, was a valid enactment in August, 1907, applicable to a block signal tower operator engaged in spacing interstate and local trains, the order appealed from was erroneous and the judgment of the trial court correct, because there is no question that during that month the respondent required one of its employees thus engaged to be on duty more than eight hours out of twenty-four in violation of the provisions of that act. Two reasons are alleged why said statute was not valid and applicable. The first of these is that the legislature had no power to place such a limitation on the right of the respondent to keep such an employee on duty, and the second one is that such employee being in part engaged in forwarding interstate commerce Congress had the superior power to regulate his hours of labor and that it had done this by legislation which barred or superseded the State legislation referred to.

It is clear that the first defense cannot be maintained. The doctrine that the legislature under proper circumstances, and within reasonable limits may exercise its police power in the regulation of hours and conditions of labor is now thoroughly and broadly established. One familiar form of this class of legislation is that which has for its object the promotion of the health and welfare of the employee as especially in the case of women and children. Another class seeks to protect the safety of the public by limiting the hours of labor of those who are in control of dangerous agencies lest by excessive periods of duty they become fatigued and indifferent and cause accidents leading to injuries and destruction of life. This

statute comes within the latter class, and this court in the case of Pelin v. N. Y. C. & H. R. R. R. Co. (102 App. Div. 71; 115 App. Div. 883; 188 N. Y. 565), affirmed a judgment where the basis of the recovery was as here, that the defendant had permitted or required an employee to be on duty for a length of time in excess of that prescribed by another section of the act which we are now considering.

The counsel for the respondent has reviewed at length the duties discharged and the exact amount of time required in the
50 actual performance thereof by the operator on the occasion in question, and he makes these facts the basis for an argument that no conditions existed which warranted the legislature in fixing the limit which it did, and he insists that the period of service prescribed for this particular class of employees is entirely out of proportion to that permitted to various other employees engaged in the operation of a railroad. His argument is not without force and very well might be addressed to the legislature as a reason for permitting employment for a larger number of hours. I do not think, however, that we can say that the facts so conclusively show a lack of relation between the legislation and the justifiable ends sought to be gained that we can condemn the statute as unconstitutional. For, while each of the duties performed by the operator seems simple enough, still as a whole they form quite a complicated series of acts in the transmission of signals, the giving of orders and the movement of trains, and while the actual time occupied in performing these acts is not large, still the employee for the proper discharge of his duties is compelled to be on the alert during the entire time of his employment, and it not infrequently happens that lack of active occupation during hours of duty is more trying than work itself. Thus it is not at all inconceivable that such an employee subjected to too long hours of duty and confinement might become physically fatigued and mentally inert and make mistakes which would lead to the destruction of life. This being so, it was permissible for the legislature to pass a statute limiting the hours of labor, and it cannot be said that there is no reason or argument to support its judgment that eight hours was a proper limit.

The control of such a matter by the legislature would naturally be exercised by virtue of the police power. If the form of the statute in question could be criticised as relating only to corporations engaged in the operation of railroads, and, therefore, unduly discriminatory against them, it now being settled that an individual as well as a corporation may operate a railroad (Village of
51 Phœnix v. Gannon, 195 N. Y. 471), I think that we might take judicial notice of the fact that all of the railroads in the state to which this act could apply are and almost necessarily must be operated by corporations and not by individuals, since the latter have no power to acquire land by eminent domain for railroad purposes. (Hammond Packing Co. v. Arkansas, 212 U. S. 322.)

Moreover, even if the statute failed as a valid exercise of the police power, personally I am not doubtful that under its reserved control over corporations the legislature might pass such an act in regulation of the performance of the business for which a railroad was

organized. (Lord v. Equitable Life Assurance Society, 194 N. Y. 212, 237; People v. Phyfe, 136 N. Y. 554, 557; Chicago Life Ins. Co. v. Needles, 113 U. S. 574; Louisville & N. R. R. Co. v. Kentucky, 161 U. S. 677; Mayor, etc., v. Norwich & Worcester R. R. Co., 109 Mass. 103.)

Equally important and possibly of more difficult solution are the considerations presented by the second defense, that the statute here sought to be enforced trespasses on a field of legislative action which had already been pre-empted by Congress by virtue of its power to govern interstate commerce and those engaged therein, and that, therefore, it was forbidden and nugatory. It will be noted that this defense assumed, as I think correctly, that the Labor Law purports and attempts indiscriminately and inseparably, to regulate the hours of the classes of employees designated whether engaged in interstate or local traffic, and that, therefore, its validity must be tested by the power of the legislature over the former.

This defense is predicated on the fact that Congress passed a statute, approved March 4, 1907, and taking effect a year later, which, so far as is here material, provided: "No operator, train dispatcher or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four hour period in all towers, offices, places and sta-
52 tions continuously operated day and night." Concededly this statute applied to such an operator as the one whose alleged excessive confinement is complained of here when engaged in operating interstate traffic, and the reasoning is that Congress having thus regulated his hours of labor the state could not prescribe a different or additional regulation applicable to the same man.

As is well understood, the general subject of commerce for the purpose of defining Federal and State jurisdiction in legislation may readily be divided into three fields. The first is that in which the power of the state is exclusive; the second that in which the state may act in the absence of legislation by Congress which is controlling and exclusive; the third that in which the authority of Congress is exclusive and the states cannot interfere at all. (Covington & C. Bridge Co. v. Kentucky, 154 U. S. 204, 209.)

It is important to keep in mind for the purposes of this discussion that within the first field are included regulation by the state of local or intrastate commerce, and it is conceded and, therefore, the reasons will not be discussed, that the state acting within the second field might pass the present statute in the nature of a police regulation of the hours of those engaged in interstate as well as local commerce, unless the Federal statute barred such legislation. Did it do so?

Of course it is apparent that if the Federal statute saying that a signal tower operator may not work more than nine hours prevents a state from saying under controlling conditions that he may not work in excess of a lesser number of hours, State legislation of an analogous character on other subjects which readily suggest themselves, such as the proper weight of rails, the safe speed of trains,

the necessary proportion of cars to be equipped with air brakes, may be prevented by Federal legislation simply prescribing the minimum rule of precaution, and the protection by the state of the safety of its citizens at least rendered more complicated and difficult. For unless there shall be in the future such a separation of interstate and local traffic as has not yet occurred, and which might be
53 made extremely burdensome to the railroads, it will seldom happen that agencies employed in moving the former will not also be moving the latter, and, therefore, if the state is prevented by a Federal statute like that before us from adopting additional but not conflicting requirements which it deems to be necessary, it will be unable to insure the safety of local passengers and traffic. And it is obvious that a factor of safety like that in the present Federal statute adapted as we must assume to average conditions prevailing throughout the country often will be quite insufficient under the special conditions prevailing in a given state.

In addition, it is doubtless established by the Employers' Liability Cases (207 U. S. 463) that a person injured in the course of local traffic, as the result of negligence of an employee, could not predicate a claim for relief on the Federal statute limiting the latter's hours of employment.

Passing these general considerations, when we seek for authorities on the question whether the Federal statute is exclusive and preventive of the state statute, no decision by the Supreme Court of the United States is found rendered upon facts so similar to those here presented as to make it clearly and manifestly controlling. We are obliged to rely on general rules which have been laid down by that learned court from time to time in the consideration of questions of the same general class and which do not seem to be always quite harmonious.

In Gulf, C. & S. F. Ry. Co. v. Hefley (158 U. S. 98) the court had before it the question whether a state statute making it unlawful for a railroad company to charge and collect a greater sum for freight than was specified in the bill of lading was when applied to interstate freight in conflict with a Federal statute providing that it should be unlawful to charge and collect a greater or less compensation for the transportation of property than was specified in the published schedule of rates provided for by the act. It was conceded that the state act, although incidentally relating to interstate commerce, would be valid as a police regulation in the absence of congressional legislation, but it was held that it conflicted
54 with the latter and was, therefore, invalid. Mr. Justice Brewer, writing for the court, said: "Clearly the state and the national acts relate to the same subject-matter and prescribe different rules. * * * The carrier cannot obey one statute without sometimes exposing itself to the penalties prescribed by the other. * * * In case of such a conflict the state law must yield. * * * The question is not whether, in any particular case, operation may be given to both statutes, but whether their enforcement may expose a party to a conflict of duties. It is enough that the two statutes operating upon the same subject-matter prescribe different rules. In such case one must yield and that one is the state law."

If we should apply the language quoted with any degree of literalness to the present case it would be difficult to escape the conclusion that the eight-hour state statute was barred by the Federal statute. But it is to be observed that what was there written was so written in a case where at times it would not be possible to observe the state statute without violating the Federal one, and an element of possible actual conflict was present which is absent here, for of course a restriction of employment to eight hours does not in any ordinary sense violate the statute against employment in excess of nine hours.

Other cases seem to me to lay down the rule in more liberal terms in favor of the state legislation.

In Missouri, K. & T. Ry. Co. v. Haber (169 U. S. 613) and in Reid v. Colorado (187 U. S. 137) the court had before it the question of alleged conflict between a Federal statute regulating the inspection, etc., of cattle for purposes of interstate shipment and state statutes relating to the same subject. Congress had adopted an act known as the "Animal Industry Act," which was designed to regulate and prevent the shipment of infected and diseased cattle and which went into the subject with much detail and completeness. Amongst other things it provided that for the purposes of the act

"splenetic or Texas fever should not be considered a contagious, infectious or communicable disease," and apparently it was broad enough to authorize a certificate by Federal officials that cattle were free from any disease. Notwithstanding this, the court held in the first case that the state statute was valid which permitted one of its citizens to recover damages sustained by communication to his animals of Texas or splenetic fever by cattle being transported in accordance with the Federal statute, and in the last case upheld a statute making it a criminal offense under certain conditions to bring into the state animals without a certificate by state authorities that they were free from disease. It will be observed that in the first case a recovery was had under the state statute on the theory that Texas or splenetic fever was communicable, which was expressly negatived by the Federal statute.

Mr. Justice Harlan wrote in each case. In the first one he expressly approved as settled law the rule enunciated in Sinnot v. Davenport (22 How. [U. S.] 227, 243), and stated "that a statute enacted in execution of the reserved power of the state is not to be regarded as inconsistent with an act of Congress passed in the execution of a clear power under the constitution, unless the repugnance or conflict is so direct and positive that the two acts cannot be reconciled or stand together." In the latter case he wrote: "It should never be held that Congress intends to supersede or by its legislation suspend the exercise of the police powers of the states, even when it may do so, unless its purpose to effect that result is clearly manifested" (p. 148), and again cited with approval Sinnot v. Davenport.

In Smith v. Alabama (124 U. S. 465) the court passed upon the validity of the statute of Alabama requiring engineers to undergo an examination and obtain a license from a state board of examiners. The point was made that the statute in its application to engineers on interstate trains was a regulation of commerce among the states

and repugnant to the Constitution. This contention was overruled and the statute held to be a proper exercise of the police power in the absence of national legislation which prevented it. Speaking upon this subject it was said, referring to the fact that Congress had prescribed the qualifications for pilots and engineers of steam vessels engaged in the coasting trade and navigating the inland waters of the United States while engaged in commerce among the states, that the power of Congress "might, with equal authority be exercised in prescribing the qualifications for locomotive engineers employed by railroad companies engaged in the transportation of passengers and goods among the States, and in that case would supersede any conflicting provisions on the same subject made by local authority. But the provisions on the subject contained in the statute of Alabama under consideration are not regulations of interstate commerce. * * * Considered in themselves, they are parts of that body of the local law which, as we have already seen, properly governs the relation between carriers of passengers and merchandise and the public who employ them which are not displaced until they come in conflict with express enactments of Congress in the exercise of its power over commerce, and which, until so displaced, according to the evident intention of Congress, remain as the law governing carriers in the discharge of their obligations, whether engaged in the purely internal commerce of the State or in commerce among the States." (p. 479.) (See, also, Henningtonv. Georgia, 163 U. S. 299; Gladson v. Minn., 166 U. S. 427.)

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It would seem to me that within the authority of these cases and of what was said in deciding them as above quoted, it may be held that where Congress has prescribed a general minimum limit of safety applicable to average conditions throughout the country in the movement of interstate traffic, a state statute does not trespass upon forbidden territory and become obnoxious because, in response to special conditions prevailing within its limits, it has raised such limit of safety. There is no conflict; the state has simply supplemented the action of the Federal authorities. It is the same as if Congress had enacted that the classes of employees named might be employed for nine hours or less, and the state had then fixed the lesser number, which was left open by the Federal statute. The form of the latter fixing the outside limit, but not expressly legalizing employment up to that limit, fairly seems to have invited and to have left the subject open for supplemental State legislation if necessary. Such is the view which this court has taken on another occasion in the decision of a question quite identical with that here presented.

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The case of Fitch *v.* Livingston (4 Sandf. 492) was brought on a bond given for the purpose of discharging a vessel which had been attached as the result of a collision occurring in the Hudson river. The question involved in the action pertained to the negligent management of the vessel for which the bond had been given, and this alleged negligence consisted in non-compliance with the statute of the state requiring such a boat in the night time to carry and show two lights, one at the bow and the other at the stern. The offending vessel was engaged in interstate business, and the court said: "The

great point of the defense is, that the propeller was not bound to carry more than one light, because she was a vessel owned in another state, navigating a river subject to the jurisdiction of Congress, under a national enrollment and license. The act of Congress of July 7, 1838, * * * makes it the duty of the master and owner of every steamboat running between sunset and sunrise to carry one or more signal lights," and the court discussed at considerable length and with much care the question whether a Federal statute requiring a boat to show at least one light barred the state statute requiring it to show two lights, and it was held "that the addition of a further qualification, is not in direct collision with a law prescribing the first qualification. The act of Congress does not provide that it shall be sufficient for a steamboat navigating at night to be equipped with one light only, or that, if so equipped, she shall be at liberty to navigate in all waters, whether inland or on the coast. * * * The act of Congress of 1838 requires certain safeguards to be observed by steamboats; one of which is, that they shall show at night at least one light. A state, finding those safeguards insufficient,
58 within its waters, adds others which are necessary to preserve life and property. There is no direct conflict."

The judgment in this case, although not reported, was subsequently affirmed by this court without opinion (Jan'y 14, 1853).

Furthermore, when a libel springing out of this same collision came before the Circuit Court of the United States for consideration (The Santa Claus, 21 Fed. Cases, 406) the court took into consideration the fact that the vessel engaged in interstate travel did not show two lights notwithstanding that the Federal statute only required one. While this view was predicated on common-law principles instead of on the state statute referred to, it would seem indirectly to be authority for the proposition that the state statute in accordance with the rules of safety and necessity requiring two lights would have been held valid notwithstanding the Federal statute.

We do not, of course, overlook the fact that the court of last resort in four of our sister states upon the precise question here involved has adopted a different conclusion than the one we are reaching (State v. Chicago, M. & S. P. Ry. Co., 117 N. W. Rep. 686; State v. Mo. Pac. Ry. Co., 111 S. W. Rep. 500; State v. Texas & N. O. Ry. Co., 124 S. W. Rep. 984; State v. No. Pac. Ry. Co., 93 Pac. Rep. 945), but necessarily in the absence of what we regard as adverse controlling authority of the Supreme Court of the United States we follow the views of our own court as above cited.

It has been urged, and in one or more of the decisions of other states cited above, it was held that at least the provisions of the State statute would be controlling during the period elapsing between the date of the enactment of the Federal statute and the date, a year later, when it took effect, and in this connection it is pointed out that the alleged violation of the state statute in this case took effect within the period mentioned.

It seems to me that this contention is well founded and sensible. The general rule is and necessarily must be that a statute
59 does not become controlling until it actually becomes operative. And it readily will be seen how unfortunate and para-

lyzing might be the results of any contrary doctrine in this case. From the passage by both Congress and state legislatures of legislation on this subject of hours of employment we must assume that it was a subject reasonably requiring legislative regulation in the interest of the public. Congress legislating for the entire country might have deemed it wise under all of the circumstances to allow two or even three years within which all of the different employers affected by its statute might prepare to comply with the requirements thereof. If the theory of the respondent is correct, no state within that time, however urgent or pressing the necessity and demand for prompt action under special conditions prevailing within its borders, might pass any law which would cover even this interval because general and average conditions throughout the country might be satisfied by such a statute becoming effective at some rather remote day in the future. I do not believe that such a result should be tolerated or adjudged under the facts of this case even though it should be decided that there was a conflict between the Federal and the state legislation after the former became effective.

These views were adopted in a well-reasoned opinion by the Supreme Court of Montana in State v. Northern Pacific Railway Co. (93 Pac. Rep. 945) although that court disagreed with us in the conclusions reached on the first branch of this case.

These views lead to a reversal of the order appealed from and to an affirmance of the judgment of the trial court, with costs in both courts.

Cullen, Ch. J., Gray, Edward T. Bartlett, Werner and Willard Bartlett, JJ., concur; Chase, J., absent.

Order reversed, etc.

60 Supreme Court, Rockland County.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs,
against
ERIE RAILROAD COMPANY, Defendant.

A judgment in this proceeding in favor of the plaintiffs and against the defendant having been made by the trial term of this court on the 6th day of April, 1908, and duly entered in the office of the Clerk of the County of Rockland on the 3d day of December, 1908, whereby it was adjudged that the said plaintiffs recover of the said defendant, the Erie Railroad Company, One hundred dollars as a fine and penalty, together with One hundred and thirty-five and ninety one-hundredths dollars ($135.90), costs of said action as taxed; and the defendant having appealed from said order to the Appellate Division of this Court for the Second Department, and the said judgment of the trial term of this court having been reversed and a new trial ordered, costs to abide the event, and the order of reversal thereon having been rendered on the 10th day of December, 1909, and the plaintiffs having appealed therefrom to the Court of Appeals, stipulating for judgment absolute in the event of affirmance, and the Court of Appeals having sent hither its

remittitur, filed herein on the 31st day of May, 1910, by which it appears that the Court of Appeals has reversed the order of the Appellate Division granting a new trial and affirmed the judgment of the trial court with costs in both courts, and has given judgment accordingly, and has remitted its judgment to this court to be en-
61 forced according to law, and this Court having by an order entered herein the 31 day of May, 1910, ordered that said judgment be made the judgment of this court, and the plaintiffs' costs having been adjusted at the sum of Two hundred eighty-eight and 10/100 dollars ($288.10),

Now, on motion of Edward R. O'Malley, Attorney-General, Attorney for the plaintiffs,

It is ordered, adjudged and decreed, that the judgment of the said Court of Appeals be and the same is hereby made the judgment of this Court; and

It is further ordered, adjudged and decreed, that the plaintiffs, the People of the State of New York, recover of the defendant, Erie Railroad Company, the sum of Two hundred and eighty-eight and 10/100 dollars ($288.10), their costs as adjusted herein, and that they also recover of the defendant, Erie Railroad Company, the sum of Two hundred thirty-five and 90/100 dollars ($235.90), pursuant to the judgment of the trial court, entered herein on December 4, 1908, in all the sum of Five hundred and twenty-four dollars ($254.00), and that they have execution therefor.

Dated, May 31, 1910.

CYRUS M. CRUM, *Clerk.*

62 STATE OF NEW YORK,
County of Rockland, Clerk's Office, ss:

I, Cyrus M. Crum, Clerk of the said County, and also Clerk of the Supreme and County Courts, being Courts of Record held therein, do hereby certify that I have compared the annexed copy, Case on Appeal with the original thereof, filed in this office on December 17, 1909, and the annexed copy Final Judgment with the original thereof, filed in this office on May 31, 1910 and that the same is a correct transcript therefrom and of the whole of said originals. I further certify that the printed memoranda opinion hereto annexed in The People of the State of New York against Erie Railroad Company, is a correct transcript of said entitled case and memoranda as contained in Vol. 198 Page 374 of the Official New York Court of Appeals Report.

In testimony whereof, I have hereunto set my hand and affixed my seal this 11th day of May 1912.

[Rockland County Seal.]

CYRUS M. CRUM, *Clerk.*

63 [Endorsed:] Court of Appeals of the State of New York. The People of the State of New York, Plaintiffs-Appellants, against Erie Railroad Company, Defendant-Respondent. Case on appeal. George N. Orcutt, Attorney for Defendant-Respondent, 50

Church Street, Borough of Manhattan, New York City. Edward R. O'Malley, Attorney-General, Attorney for Plaintiffs-Appellants, Albany, N. Y. Filed May 31st, 1910. Clerk's Office, Rockland County, N. Y. Service of three copies of the within case on Appeal is hereby admitted this 29th day of January, 1910. George N. Orcutt, Attorney for Defendant-Respondent.

Let the writ issue. Bond $500.
Dated May 23, 1912.

CHARLES E. HUGHES,
Associate Justice of the Supreme Court U. S.

64 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court upon a remittitur from the Court of Appeals of the State of New York, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The People of the State of New York, plaintiffs, and Erie Railroad Company, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said defendant, Erie Railroad Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

65

Witness the Honorable Edward D. White, Chief Justice of the

United States, the 23d day of May, in the year of our Lord one thousand nine hundred and twelve.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
CHARLES E. HUGHES,
Associate Justice of the Supreme Court of the United States.

66 UNITED STATES OF AMERICA, *ss:*

To The People of the State of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of New York, wherein Erie Railroad Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Charles E. Hughes, Associate Justice of the Supreme Court of the United States, this twenty-third day of May, in the year of our Lord one thousand nine hundred and twelve.

CHARLES E. HUGHES,
Associate Justice of the Supreme Court of the United States.

67 Copy of the within citation received by me at the office of the Attorney-General of the State of New York, this 27th day of May 1912.

THOMAS CARMODY,
F. K.,
Attorney-General.

68 Know all Men by these Presents, That we, Erie Railroad Company, as principal, and American Surety Company of New York, sureties, are held and firmly bound unto The People of the State of New York, their — in the full and just sum of Five hundred dollars, to be paid to the said The People of the State of New York, their certain attorney, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-third day of May, in the year of our Lord one thousand nine hundred and twelve.

Whereas, lately at a Supreme Court of the State of New York, in a suit depending in said Court, between The People of the State of New York, plaintiffs, and Erie Railroad Company, defendant, a judgment was rendered against the said defendant and the said defendant having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the

aforesaid suit, and a citation directed to the said The People of the State of New York, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Erie Railroad Company shall prosecute said writ to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

ERIE RAILROAD COMPANY,
By F D. McKENNEY, *Attorney.* [SEAL.]
AMERICAN SURETY COMPANY OF NEW YORK, [SEAL.]
By ROBERT H. YOUNG, *Vice President.*
L. BERT NYE, [SEAL.]
Resident Assistant Secretary.

Sealed and delivered in presence of—
H. S. TAYLOR.
H. R. WATKINS.

Approved by—
CHARLES E. HUGHES,
Associate Justice of the Supreme Court of the United States.

Original endorsed: "Filed May 28, 1912."

69 STATE OF NEW YORK,
County of Rockland, Clerk's Office, ss:

I, Cyrus M. Crum, Clerk of the said County, and also Clerk of the Supreme and County Courts, being Courts of Record held herein, do hereby certify that attached to the annexed certified transcript of record are the writ of error with allowance thereon; the citation with acceptance of service thereof and the same are the originals thereof; and a copy of the bond on writ of error which I have compared with the original thereof on file in this office and find the same to be a true copy thereof.

In witness whereof I have hereunto set my hand and affixed my official seal this 28th day of May, 1912.

[Rockland County Seal.]

CYRUS M. CRUM,
Clerk of Rockland Co., N. Y.

Endorsed on cover: File No. 23,230. New York Supreme Court. Term No. 266. Erie Railroad Company, plaintiff in error, vs. The People of the State of New York. Filed May 29th, 1912. File No. 23,230.

23

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 266.

ERIE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

GEORGE F. BROWNELL,
FREDERIC D. MCKENNEY,
Attorneys for Plaintiff in Error.

SUBJECT INDEX.

List of Cases.

SUPREME COURT OF THE UNITED STATES.

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vs.

THE PEOPLE OF THE STATE OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

Short Point.

The Congress, in the exercise of its constitutional power to regulate commerce among the several States, having enacted the "Hours of Service Law," approved March 4, 1907 (34 Stats., 1415, ch. 2939), which law, among other things,

limits the permissible hours of service of employees of interstate railroads who "by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements," the simple question presented by this writ of error is whether a judgment of the Supreme Court of New York, which imposed upon the Erie Railroad Company a penalty under section 7*a* of chapter 627 of the Laws of New York, 1907, "To Amend the Labor Law Relative to Hours of Labor of Certain Employees on Railroads," approved July 19, 1907, effective October 1, 1907 (R., 11), for having required or permitted an operator "who spaces trains by the use of the telegraph or telephone under what is known and termed the 'block system' * * * to be on duty for more than *eight* hours in a day of twenty-four hours," is valid.

Plaintiff in error asserts the invalidity of such a judgment, contending that such right as a State may possess to apply its police power in the regulation of the instrumentalities of interstate commerce, including the employees of carriers by railroad when engaged therein, exists only so long as the Congress remains silent upon the particular subject, and ceases to exist from that moment when the Congress, by acting thereon, manifests its purpose to call into play and exercise its paramount authority.

Upon the authority of Northern Pacific Railway Company *vs.* State of Washington *ex rel.* Atkin-

son, Attorney General, 222 U. S., 370, wherein, speaking of a situation like unto that presented to the Court in the case at bar, it was said

> "that as the enactment by Congress of the law (Hours of Service) in question was an assertion of its power, by the fact alone of such manifestation that subject (the regulation of hours of service of employees engaged in interstate commerce) was at once removed from the sphere of the operation of the authority of the State,"

it is respectfully submitted the judgment under review must be reversed.

Statement of Case.

This action was instituted by The People of the State of New York in the Supreme Court of that State against the Erie Railroad Company to recover a penalty of $100 and costs for "on or about the first day of November, 1907," requiring one David Henion, a telegraph operator in its employ, "who was spacing trains by the use of the telegraph under what is known and termed the block system, and who was, at said times, reporting trains" to other offices and officers, "to be on duty for more than eight hours in said day of twenty-four hours," contrary to the provisions of section 7*a* of said labor law (of New York) as amended by chapter 627 of the Laws of 1907 (R., 4).

The defendant, by answer, admitted that it was a corporation under the laws of the State of New York; asserted its interstate character (R., 5); admitted that it did require and permit Henion, a telegraph operator whose duties were as described, "to be on duty for more than eight hours in said day of twenty-four hours"; alleged that on the day in question "the trains which the said Henion was so engaged in spacing and reporting, and the cars, engines and trains in respect to whose movement he was (so) engaged," were being used "in the transportation of passengers, persons and property from one State to another, and on that day the said Henion in the performance of his (such) duties was an employee of the defendant engaged in interstate commerce" (R., 6); that by the Constitution of the United States the power to regulate interstate commerce rests in the Congress, which "by chapter 2939 of the Acts of the 59th Congress of the United States, approved March 4, 1907" (the Federal "Hours of Service Law"), had determined "the (permissible) hours of labor of employees of railroad corporations engaged in interstate commerce," and had authorized "employees who by the use of the telegraph or telephone" dispatch, report, transmit, receive or deliver orders pertaining to or affecting train movements "to be required and (or) permitted to be or remain on duty for nine hours in any twenty-four hour period in all towers, offices, places and stations continuously operated night and day, and for a period of

thirteen hours in all towers, offices and stations operated only during the day time" (R., 7); and having specifically asserted the exclusive character of the Federal power in the premises, insisted that "chapter 627 of the Laws of 1907 is in excess of the power of the legislature of the State of New York and (is) unconstitutional and void, in that it is an attempt to regulate commerce between the States" (R., 8).

The issue so made was tried to a court without a jury (R., 8), and the facts having been found substantially as above set forth (R., 9 *et seq.*), the trial court concluded as matter of law:

> 1. That the labor law of the State of New York as amended by chapter 627 of the Laws of 1907, section 7*a*, had been violated (R., 9).
>
> 2. That by reason of such violation The People of the State of New York were entitled to judgment against defendant for the prescribed penalty; and
>
> 3. That said section 7*a* of the labor law, chapter 627 of the Laws of 1907, is valid and its provisions do not violate and are not in conflict with the Constitution of the United States;

and entered its judgment against the Erie Railroad Company for "one hundred dollars ($100) as a fine and penalty, together with one hundred and thirty-five and 90/100 dollars ($135.90) costs of said action as taxed, amounting in all to the sum of $235.90," with execution therefor (R., 10).

No opinion was filed by the trial court (R., 21).

Appropriate exceptions were seasonably reserved on behalf of the defendant company (R., 21), and the case was duly appealed to the appellate division of the Supreme Court for the Second Department (R., 3), where, after hearing, the judgment of the trial court was reversed and a new trial granted (R., 21, 23).

In announcing the reasons for its order of reversal, the appellate division, per Miller, J., said (R., 23, 24, 25):

> "* * * I shall assume, for the purposes of this discussion—indeed my own view is, that apart from the question now to be discussed, the State has the undoubted right in the exercise of the police power to provide for the welfare and safety of the public by limiting the hours of labor of railroad employees whose work involves the safety of the public, and that the discrimination between different classes of employees made by the statute is not arbitrary but rests on a reasonable basis. But there can be no doubt that, so far as interstate commerce may be affected, the jurisdiction of the State and the Federal legislature is concurrent; and that is the position taken by the learned attorney general. However, he asserts that the acts of Congress and the State legislature may both be effective even where interstate commerce is involved, but there is no inconsistency between the two, and that in

any event the act of Congress was not in force when the State act was passed or when the offense charged was committed. It is not questioned that, if Congress sees fit to deal with a subject over which it and the State legislature have concurrent jurisdiction, its action is supreme and exclusive. It is unnecessary to cite authority in support of that proposition. It is based on an express provision of the Federal Constitution and is required by the necessities of the case for, obviously, it would not do to have one rule prescribed by Congress and another by the State. The latter must yield to the former. Now, before the act in question was passed, Congress had passed an act covering precisely the same ground, limiting the time that the class of employees in question should be required or permitted to work to nine hours out of twenty-four. It is contended that, as only a maximum time was prescribed, an act limiting the time to a shorter period is not inconsistent therewith. But that contention loses sight of the fundamental question upon which the exercise of jurisdiction, which the State legislature possesses concurrently with Congress, depends. Where the jurisdiction of Congress is exclusive, non-action by it shows an intention on its part that the subject shall be free from restriction. Where jurisdiction is concurrent, non-action shows an intention to leave the matter to be dealt with by the State legislatures; but action, which prescribes the rule to govern a particular case, shows an intention of Congress to deal with that case to the exclusion of the State legislatures, and any different rule prescribed by the latter

is inconsistent therewith" * * * (R., 24).

"It is true that, by its express terms, the act of Congress in question did not go into effect until March 4, 1908. It is stated in the brief of the respondent, by inadvertence no doubt, that the State law was in force when it was passed. While an act may not go into force until a given date it may be effective for certain purposes before that date. It becomes a law when passed, the operation of which, however, is suspended for a given period. As a declaration of the purpose and intention of Congress, it was as effective when passed as when it went into effect a year later. By it, Congress declared its purpose to enter the field which had theretofore been left to the States, and its view that a maximum of nine hours of labor in twenty-four was the proper rule for the class of employees in question; and it suspended the operation of that rule for a year, obviously to allow the interstate carriers affected to readjust their force to conform to the law. Action by Congress on March 4, 1907, cannot be regarded as non-action until March 4, 1908, because Congress for obvious reasons saw fit to postpone the operation of the rule, which it declared to be the proper rule, for a year. Our attention is called to two decisions in other States upon the precise point, which seem to us to be sound (State *vs.* Missouri Pac. Ry. Co., 111 S. W. Rep., 500; State *vs.* Chicago, M. & St. P. Ry. Co., 117 N. W. Rep., 686)."

From the order of the appellate division, The People of the State of New York appealed to the

Court of Appeals of that State, where the order appealed from was reversed and the judgment of the trial court was affirmed with costs against the defendant company in both courts (R., 33, 1).

In the course of its opinion, filed in the cause, the Court of Appeals, per Hiscock, J., said (R., 26, 28):

> "If section 7*a* of the labor law, above quoted, was a valid enactment in August, 1907, applicable to a block signal tower operator engaged in spacing interstate and local trains, the order appealed from was erroneous and the judgment of the trial court correct, because there is no question that during that month the respondent required one of its employees thus engaged to be on duty more than eight hours out of twenty-four in violation of the provisions of that act. Two reasons are alleged why said statute was not valid and applicable. The first of these is that the legislature had no power to place such a limitation on the right of the respondent to keep such an employee on duty, and the second one is that such employee being in part engaged in forwarding interstate commerce Congress had the superior power to regulate his hours of labor and that it had done this by legislation which barred or superseded the State legislation referred to" * * * (R., 26).
>
> "Equally important and possibly of more difficult solution are the considerations presented by the second defense, that the statute here sought to be enforced trespasses

on a field of legislative action which had already been pre-empted by Congress by virtue of its power to govern interstate commerce and those engaged therein, and that, therefore, it was forbidden and nugatory. It will be noted that this defense assumed, as I think correctly, that the labor law purports and attempts indiscriminately and inseparably, to regulate the hours of the classes of employees designated, whether engaged in interstate or local traffic, and that, therefore, its validity must be tested by the power of the legislature over the former.

"This defense is predicated on the fact that Congress passed a statute, approved March 4, 1907, and taking effect a year later, which, so far as is here material, provided: 'No operator, train dispatcher or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four hour period in all towers, offices, places and stations continuously operated day and right.' Concededly this statute applied to such an operator as the one whose alleged excessive confinement is complained of here when engaged in operating interstate traffic, and the reasoning is that Congress having thus regulated his hours of labor the State could not prescribe a different or additional regulation applicable to the same man" * * * (R., 28).

"Of course it is apparent that if the Federal statute saying that a signal tower

operator may not work more than nine hours prevents a State from saying under controlling conditions that he may not work in excess of a lesser number of hours, State legislation of an analogous character on other subjects which readily suggest themselves, such as the proper weight of rails, the safe speed of trains, the necessary proportion of cars to be equipped with air brakes, may be prevented by Federal legislation simply prescribing the minimum rule of precaution, and the protection by the State of the safety of its citizens at least rendered more complicated and difficult. For unless there shall be in the future such a separation of interstate and local traffic as has not yet occurred, and which might be made extremely burdensome to the railroads, it will seldom happen that agencies employed in moving the former will not also be moving the latter, and, therefore, if the State is prevented by a Federal statute like that before us from adopting additional but not conflicting requirements which it deems to be necessary, it will be unable to insure the safety of local passengers and traffic. And it is obvious that a factor of safety like that in the present Federal statute adapted as we must assume to average conditions prevailing throughout the country often will be quite insufficient under the special conditions prevailing in a given State." * * *

"Passing these general considerations, when we seek for authorities on the question whether the Federal statute is exclusive and preventive of the State statute, no decision by the Supreme Court of the United States is found rendered upon facts so similar to

those here presented as to make it clearly and manifestly controlling. We are obliged to rely on general rules which have been laid down by that learned court from time to time in the consideration of questions of the same general class and which do not seem to be always quite harmonious" * * * (R., 29).

"It would seem to me that within the authority of these cases and of what was said in deciding them as above quoted, it may be held that where Congress has prescribed a general minimum limit of safety applicable to average conditions throughout the country in the movement of interstate traffic, a State statute does not trespass upon forbidden territory and become obnoxious because, in response to special conditions prevailing within its limits, it has raised such limit of safety. There is no conflict; the State has simply supplemented the action of the Federal authorities. It is the same as if Congress had enacted that the classes of employees named might be employed for nine hours or less, and the State had then fixed the lesser number, which was left open by the Federal statute. The form of the latter fixing the outside limit, but not expressly legalizing employment up to that limit, fairly seems to have invited and to have left the subject open for supplemental State legislation if necessary. Such is the view which this court has taken on another occasion in the decision of a question quite identical with that here presented" * * * (R., 31).

"We do not, of course, overlook the fact that the court of last resort in four of our

sister States upon the precise question here involved has adopted a different conclusion than the one we are reaching (State *vs.* Chicago, M. & S. P. Ry. Co., 117 N. W. Rep., 686; State *vs.* Mo. Pac. Ry. Co., 111 S. W. Rep., 500; State *vs.* Texas & N. O. Ry. Co., 124 S. W. Rep., 984; State *vs.* Mo. Pac. Ry. Co., 93 Pac. Rep., 945), but necessarily in the absence of what we regard as adverse controlling authority of the Supreme Court of the United States we follow the views of our own court as above cited.

"It has been urged, and in one or more of the decisions of other States cited above, it was held that at least the provisions of the State statute would be controlling during the period elapsing between the date of the enactment of the Federal statute and the date, a year later, when it took effect, and in this connection it is pointed out that the alleged violation of the State statute in this case took effect within the period mentioned (R., 32).

"It seems to me that this contention is well founded and sensible. The general rule is and necessarily must be that a statute does not become controlling until it actually becomes operative. And it readily will be seen how unfortunate and paralyzing might be the results of any contrary doctrine in this case. From the passage by both Congress and State legislatures of legislation on this subject of hours of employment we must assume that it was a subject reasonably requiring legislative regulation in the interest of the public. Congress legislating for the entire country might have deemed it wise under all of the circumstances to allow two

> or even three years within which all of the different employers affected by its statute might prepare to comply with the requirements thereof. If the theory of the respondent is correct, no State within that time however urgent or pressing the necessity and demand for prompt action under special conditions prevailing within its borders, might pass any law which would cover even this interval because general and average conditions throughout the country might be satisfied by such a statute becoming effective at some rather remote day in the future. I do not believe that such a result should be tolerated or adjudged under the facts of this case even though it should be decided that there was a conflict between the Federal and the State legislation after the former became effective" (R., 33).

On remittitur from the Court of Appeals, the Supreme Court of the State entered its final judgment in favor of the plaintiffs and against the defendant Erie Railway Company (R., 33, 34). To review this final judgment of the Supreme Court of the State of New York so entered on the remittitur from the Court of Appeals, writ of error from this honorable court has been allowed and duly perfected (R., 35, 36), and the matter now comes on for argument and decision here.

Assignments of Error.

1. The Court of Appeals of the State of New York erred in holding that the provisions of the labor law of the State of New York, and especially section 7*a*, Laws of 1907, chapter 627, were valid and applicable to the circumstances and in the conditions disclosed by the transcript of the record, and in entering judgment pursuant to such holding against the Erie Railroad Company.

2. The Supreme Court of the State of New York on remittitur from the Court of Appeals of said State erred in entering its final judgment against the Erie Railroad Company and in favor of the People of the State of New York in the total sum of $524.00 as penalty and costs for an alleged violation of the labor law of New York, especially of section 7*a*, chapter 627, of the Laws of 1907.

3. There was error on the part of each of the above-named courts in refusing to hold the provisions of the labor law of the State of New York, and especially section 7*a* of the Laws of 1907, chapter 627, relied on by the prosecutor, to be invalid because repugnant to the Federal "Hours of Service Law" and in violation of article I, section 8, of the Constitution of the United States, which confers upon the Congress the exclusive and unlimited power "to regulate commerce * * * among the several States."

The Findings of Fact.

The trial court found that—

a. the defendant, Erie Railroad Company, at the time of the occurrence complained of was a railroad corporation engaged in the interstate transportation of persons, goods and merchandise by railroad (R., 12);

b. it required a telegraph operator in its employ and concerned with the movement of trains to be and remain on duty for more than eight hours of a certain day of twenty-four hours, there being then existent no extraordinary emergency necessitating such action (R., 13);

c. on the day in question the majority of the trains which said operator was engaged in spacing and reporting were engaged in interstate commerce, transporting passengers, persons or property from one State to another;

d. said telegraph operator in the performance of his duties was an employee of the defendant (Erie Railroad Company) engaged in interstate commerce (R., 16).

The Repugnant Statutes.

The Federal "Hours of Service Act," approved March 4, 1907, in force "one year after its passage" (34 Stats. L., 1415), entitled "An act to promote the safety of employees and travelers

upon railroads by limiting the hours of service of employees thereon," reads in pertinent part as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the provisions of this act shall apply to any common carrier or carriers, their officers, agents, and employees, engaged in the transportation of passengers or property by railroad * * * from one State of the United States * * * to any other State of the United States, * * *
>
> SEC. 2. That it shall be unlawful for any common carrier, its officers or agents, subject to this act to require or permit any employee subject to this act to be or remain on duty for a longer period than sixteen consecutive hours * * *
>
> *Provided*, That no operator, train dispatcher, or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four-hour period in all towers, offices, places, and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places, and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four-hour period on not exceeding three days in any week: * * *

SEC. 3. That any such common carrier, or any officer or agent thereof, requiring or permitting any employee to go, be, or remain on duty in violation of the second section hereof, shall be liable to a penalty of not to exceed five hundred dollars for each and every violation, to be recovered in a suit or suits to be brought by the United States district attorney in the District Court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such district attorney to bring such suits upon satisfactory information being lodged with him. * * *

SEC. 4. It shall be the duty of the Interstate Commerce Commission to execute and enforce the provisions of this act, and all powers granted to the Interstate Commerce Commission are hereby extended to it in the execution of this act.

SEC. 5. That this act shall take effect and be in force one year after its passage.

Chapter 627 of the Laws of New York for the year 1907, entitled "An act to amend the labor law relative to hours of labor of certain employees on railroads," which became a law July 19, 1907, with the approval of the Governor, and took effect October 1, 1907, reads as follows:

"The People of the State of New York, represented in Senate and Assembly, do enact as follows:

"SECTION 1. Chapter four hundred and fifteen of the Laws of eighteen hundred and ninety-seven, entitled 'An act in relation to

labor, constituting chapter thirty-two of the General Laws,' is hereby amended by adding a new section after section seven thereof, to be section seven-*a*, to read as follows:

"SEC. 7*a*. Regulation of hours of labor of block system telegraph and telephone operators and signalmen on surface, subway and elevated railroads.—The provisions of section seven of this chapter shall not be applicable to employees mentioned herein. It shall be unlawful for any corporation or receiver, operating a line of railroad, either surface, subway or elevated, in whole or in part, in the State of New York, or any officer, agent or representative of such corporation or receiver to require or permit any telegraph or telephone operator who spaces trains by the use of the telegraph or telephone under what is known and termed the 'block system' (defined as follows): Reporting trains to another office or offices or to a train dispatcher operating one or more trains under signals, and telegraph or telephone levermen who manipulate interlocking machines in railroad yards or on main tracks out on the lines or train dispatchers in its service whose duties substantially, as hereinbefore set forth, pertain to the movement of cars, engines or trains on its railroad by the use of the telegraph or telephone in dispatching or reporting trains or receiving or transmitting train orders as interpreted in this section, to be on duty for more than eight hours in a day of twenty-four hours, and it is hereby declared that eight hours shall constitute a day of employment for all laborers or employees engaged in the kind of labor aforesaid; except in cases of

extraordinary emergency caused by accident, fire, flood or danger to life or property and for each hour of labor so performed in any one day in excess of such eight hours, by any such employee, he shall be paid in addition at least one-eighth of his daily compensation. Any person or persons, company or corporation, who shall violate any of the provisions of this section, shall, on conviction, be fined in a sum not less than one hundred dollars, and such fine shall be recovered by an action in the name of the State of New York, for the use of the State, which shall sue for it against such person, corporation or association violating this act, said suit to be instituted in any court in this State having appropriate jurisdiction. Such fine, when recovered, as aforesaid, shall be paid without any deduction whatever, one-half thereof to the informer, and the balance thereof to be paid into the free school fund of the State of New York. The provisions of this act shall not apply to any part of a railroad where not more than eight regular passenger trains in twenty-four hours pass each way; provided, moreover, that where twenty freight trains pass each way generally in each twenty-four hours then the provisions of this act shall apply, notwithstanding that there may pass a less number of passenger trains than hereinbefore set forth, namely eight.

"SEC. 2. This act shall take effect October first, nineteen hundred and seven." (R., 11, 12.)

ARGUMENT.

In the absence of legislation by the Congress with respect to the hours of service of railroad employees using the telegraph or telephone in connection with the movement of trains, the labor law of the State of New York drawn in question in this cause would have been a valid exercise of the police power of the State, and probably free from constitutional objections, even as to its possible or actual effects upon such employees when engaged in interstate commerce. But as the Congress by the "Hours of Service Act" of March 4, 1907, had completely regulated the hours of labor of railway employees concerned with the movements of trains, including those making use of the telegraph or telephone for that purpose, the law of the State of New York from the date of its passage was void and of no effect as to all such employees engaged in or performing duties in connection with interstate commerce. And this is so notwithstanding that the prohibitions of the Federal law, by the terms of the act itself, only became effective one year after the date of its passage, that is to say, on March 4, 1908.

This proposition has so recently been considered and so clearly and firmly decided by this court that we are disposed to content ourselves in great measure with the simple citation of the case of Northern Pacific Ry. Co. *vs.* State of Washington

ex rel. Atkinson, Attorney General, 222 U. S., 370 (decided January 9, 1912, long after the decision of the Court of Appeals of the State of New York was rendered in the case at bar), which we think is of controlling influence with respect to every pertinent question raised on this record.

From the opinion of this court in the cited case, it appears (p. 375) that on certain days in July, 1907, the Northern Pacific Railway Company had permitted certain members of a train crew operating a train on the company's road in the State of Washington to remain on duty more than sixteen consecutive hours, contrary to the prohibitions of the Federal "Hours of Service Law." The train there in question, although moving from one point to another point within the State of Washington, was hauling merchandise from points outside of the State destined to points within the State, and from points within the State to points outside thereof, and it is declared that "this transportation was interstate commerce, and the train was an interstate train, despite the fact that it may also have been carrying some local freight. In view of the unity and indivisibility of the service of the train crew and the paramount character of the authority of Congress to regulate commerce, the act of Congress was exclusively controlling," notwithstanding (p. 376) that the prohibitions of that act were not immediately operative because of the

provisions of section 5 thereof to the effect "that this act shall take effect and be in force one year after its passage."

In the month of June, 1907, prior to the occurrence complained of, the State of Washington had enacted a law regulating the hours of service of railway employees, which greatly resembled in terms the Federal "Hours of Service Law," and likewise prohibited consecutive hours of service such as were rendered by the employees in question.

The attorney general of Washington instituted proceedings against the Northern Pacific Railway Company to recover penalties for the violation of the State law, and the company by answer denied liability on its part under the State law because of the exercise by the Congress of the authority manifested by the Federal act on the same subject.

The trial court granted a motion for judgment upon the pleadings and awarded the penalty in a substantial sum, and this judgment was affirmed by the Supreme Court of the State.

On writ of error this court, speaking through Mr. Chief Justice White, said (p. 378):

> "It is elementary, * * * that the right of a State to apply its police power for the purpose of regulating interstate com-

meree, in a case like this, exists only from the silence of Congress on the subject, and ceases when Congress acts on the subject or manifests its purpose to call into play its exclusive power. This being the conceded premise upon which alone the State law could have been made applicable, it results that as the enactment by Congress of the law in question was an assertion of its power, by the fact alone of such manifestation that subject was at once removed from the sphere of the operation of the authority of the State. To admit the fundamental principle and yet to reason that because Congress chose to make its prohibitions take effect only after a year, the matter with which Congress dealt remained subject to State power, is to cause the act of Congress to destroy itself; that is, to give effect to the will of Congress as embodied in the postponing provision for the purpose of overriding and rendering ineffective the expression of the will of Congress to bring the subject within its control—a manifestation arising from the mere fact of the enactment of the statute.

"We do not pause to cite authorities additional to those referred to by the court below, but we observe in passing that the aspect in which we view the question was cogently stated by the Supreme Court of the State of Missouri in State *vs.* Missouri Pacific Ry. Co., 212 Missouri, 658, and has also been lucidly expounded by the Supreme Court of the State of Wisconsin in State *vs.* Chicago, M. & St. P. Ry. Co., 136 Wisconsin, 407."

For the reasons so stated, as well as for others equally pertinent, which were perhaps somewhat less forcibly suggested, the judgment of the Supreme Court of the State of Washington was reversed and the cause remanded for further proceedings.

To like effect and equally as potent in expression are the cases of

Adams Express Co. *vs.* Croninger, 226 U. S., 491, 505, 506.

McDermott *vs.* Wisconsin, 228 U. S., 115, 131-132.

Chicago, Indianapolis & Louisville Ry. Co. *vs.* Hackett, 228 U. S., 559, 567.

Simpson *vs.* Shepherd, 230 U. S., 352, 399, 400.

In the cases State of Missouri *vs.* Missouri Pacific Ry. Co., 212 Missouri, 658, and State of Wisconsin *vs.* Chicago, Milwaukee & St. Paul Ry. Co., 136 Wisconsin, 407, cited by this Court with such complete approval in the case of Northern Pacific Ry. Co. *vs.* Washington *ex rel.* Atkinson, Attorney General, *ubi supra*, the controlling facts were substantially identical with the facts in the case at bar.

In each case the State legislature had enacted that eight hours should constitute the maximum of permissible service during any twenty-four-hour period or day.

In each case the State statute had become law subsequent to the enactment of the Federal Hours of Service Act, but prior to the date upon which that Act by its terms became effective.

In each case the defendant corporation had been incorporated and organized under the laws of the State which subsequently enacted the respective hours of service laws there in question.

In each case, as in the case at bar, the carriers concerned were "domestic" corporations within the contemplation of the State statutes which the State officials were seeking to enforce.

In McDermott *vs.* Wisconsin, *supra*, where the question was as to the validity of State legislation respecting the labeling of articles moving in interstate commerce which were required to be branded under the Federal pure food and drugs act, it was observed that while the Federal regulation of such subjects was within the power of Congress it by no means followed that a State might not make regulations "with a view to the protection of its people against fraud or imposition by impure food or drugs, but that (p. 131)

> "while this is true, it is equally well settled that the State may not, under the guise of exercising its police power or otherwise, impose burdens upon or discriminate against interstate commerce, nor may it enact legislation in conflict with the statutes of Congress passed for the regulation of the subject, and if it does, to the extent that the

> State law interferes with or frustrates the operation of the acts of Congress, its provisions must yield to the superior Federal power given to Congress by the Constitution."

In Chicago, Indianapolis & Louisville Ry. Co. *vs.* Hackett, 228 U. S., 559, this court, citing the case of Northern Pacific Ry. Co. *vs.* Washington, *supra*, and commenting thereon, said (p. 567):

> "There a perfectly valid act concerning the hours of service upon railroads engaged in interstate commerce had been passed. The mere postponement of its operation was held not to lessen its effect as a manifestation of the purpose of Congress to regulate a subject which might be the subject of State legislation only when Congress had been silent. The effect of this purpose to take control of the subject was held to supersede an existing State statute dealing with the same matter from the time of the passage of the act of Congress."

In Simpson *vs.* Shepherd (the Minnesota Rate Cases), 230 U. S., 352, this court, commenting upon and declaring the general principles governing the exercise of State authority when interstate commerce is affected, declared (p. 399):

> "There is no room in our scheme of government for the assertion of State power in hostility to the exercise of Federal power. The authority of Congress extends to every part of interstate commerce, and to every

instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the nation may deal with the internal concerns of the State, as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere. * * *

"The grant in the Constitution, of its own force, that is, without action by Congress, established the essential immunity of interstate commercial intercourse from the direct control of the States with respect to those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all, their regulation should be prescribed by a single authority. It has repeatedly been declared by this court as to those subjects which require a general system or uniformity of regulation the power of Congress is exclusive. In other matters, admitting of diversity of treatment according to the special requirements of local conditions, the States may act within their respective jurisdictions until Congress sees fit to act; and, when Congress does act, the exercise of its authority overrides all conflicting legislation. * * *

"The principle, which determines this

> classification, underlies the doctrine that the States cannot under any guise impose direct burdens upon interstate commerce. For this is but to hold that the States are not permitted directly to regulate or restrain that which from its nature should be under the control of the one authority and be free from restriction save as it is governed in the manner that the National Legislature constitutionally ordains."

Both on principle and upon the strength of the authorities cited it is respectfully submitted the judgment under review should be reversed and the cause remanded for further proceedings in conformity with the views above expressed.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 266.

ERIE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF FOR DEFENDANT IN ERROR.

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SUBJECT INDEX.

List of Cases.

Supreme Court of the United States.

ERIE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF NEW YORK,
DEFENDANT IN ERROR.

October Term, 1913.

No. 266.

BRIEF ON BEHALF OF DEFENDANT IN ERROR.

This action was brought here on a writ of error granted by Mr. Justice Hughes after judgment had been rendered in the Supreme Court of the State of New York in favor of the defendant in error, upon a remittitur from the Court of Appeals of the State of New York, that being the highest court of law of said State. (R., fols. 64–66.)

The judgment awarded the defendant in error the sum of $524. This amount was a fine and penalty of $100 against the Erie Railroad Company for a violation of certain provisions of the Labor Law of the State of New York, in requiring or permitting a telegraph operator in charge of a block signal station to remain on duty more than eight hours out of twenty-four, and costs of the action. (R., fols. 60–62.)

The action was begun in the Supreme Court of the State of New York. There, after a trial, the People of the State of New York had judgment against the

defendant recovering the penalty with costs. (R., fols. 19–20.) The Erie Railroad Company appealed from the judgment of the Trial Term of the Supreme Court to the Appellate Division of the Supreme Court, Second Department. The Appellate Division reversed the judgment of the Trial Term and ordered a new trial. (R., fol. 43.) An appeal was then taken to the Court of Appeals of the State of New York, by the People of the State of New York, and that court reversed the judgment of the Appellate Division and affirmed the judgment of the Trial Term with costs. (R., fols. 1–3.) The decision in the Court of Appeals was practically unanimous, for of the seven judges composing the court, all concurred except Chase, J., who is recorded as absent. (R., fol. 59.)

STATEMENT.

The purpose of the action was to recover a penalty for a violation by the defendant of section 7*a* (now section 8) of the Labor Law of the State of New York, in requiring or permitting a telegraph operator in charge of a block signal station to be on duty more than eight hours in twenty-four. (Complaint, R., pp. 4–5.) The violation itself was admitted in the State courts. (R., fols. 11–12.) The sole defense there (and apparently the same reason for bringing the case to this court) was that the statute forbidding such employment is unconstitutional in that it offended against both the United States and New York State Constitution, the particular reasons being hereafter stated in detail. (Answer, R., pp. 5–8.)

THE STATUTES.

The statutes of the State of New York which are here involved are printed in full in the appendix of

this brief: Chapter 627 of the Laws of 1907 (now section 8 of the Labor Law), and chapter 523, of the Laws of 1907 (now section 1271 of the Penal Law). We also give chapter 2939 of the acts of the 59th Congress of the United States approved March 4, 1907, but which did not become a law until March 4, 1908, which act plaintiff in error claims is exclusive and preventive of the State statute.

The section of the Labor Law of the State of New York above mentioned provides that it shall be unlawful for any corporation or receiver operating a line of railroads in whole or in part within the State of New York to require or permit any telegraph or telephone operator who spaces trains by the use of the telegraph or telephone under what is known as a "block system," that is, reporting trains to another office or offices or to a train dispatcher operating one or more trains under signals, and telegraph or telephone levermen who manipulate interlocking machines in railroad yards or on main tracks out on the lines or train dispatchers in its service whose duties substantially pertain to the movement of cars, engines or trains on its railroad by the use of the telegraph or telephone in dispatching or reporting trains or in receiving or transmitting train orders as interpreted in this section *to be on duty more than eight hours in a day of twenty-four hours;* and that eight hours constitute a day of employment for laborers or employees engaged in that kind of labor, except in cases of extraordinary emergency caused by accident, fire, flood or danger to life or property.

A violation of the act makes the corporation liable to a fine of not less than $100 in an action brought in the name of the State.

It provided further in that act that it should not apply to any part of a railroad where no more than

eight regular passenger trains in twenty-four hours passed each way, and if twenty freight trains passed each way in each twenty-four hours, then the act should apply, although no more than eight regular passenger trains passed.

The Penal Law to which reference has been made prohibits keeping any employee engaged in or connected with the movement of any train of a corporation operating any line of railroad of thirty miles or over in whole or in part of this State, on duty more than sixteen consecutive hours, or to require or permit any employee who had been on duty for sixteen consecutive hours to again go on duty without having had at least ten hours of rest, or to require or permit any such employee who has been on duty for sixteen consecutive hours in a twenty-four hour period to continue on duty without having had at least eight hours of rest within such twenty-four hour period, with certain exceptions in case of accident or unexpected delay, was declared to be guilty of a misdemeanor, and on conviction, subject to punishment by fine of not less than $100 and not more than $500 for each offense.

The act of Congress mentioned went into effect March 4, 1908, after, as the State courts have found, the violation of the State statute by the Erie railroad. This act of Congress provided that no operator, train dispatcher or other employee, who, by the use of the telegraph or telephone dispatches, reports, transmits, receives or delivers orders pertaining to or affecting train movements, shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four hour period, in any tower, office, place or station continuously operated day and night.

CLAIM OF THE PLAINTIFF IN ERROR.

The plaintiff in error attacks the validity of the section of the Labor Law stated upon the ground that the Legislature of the State of New York had no power to place such limitations on the right of the Erie Railroad Company to keep such an employee on duty, and that such employee, being engaged in part in forwarding interstate commerce, Congress had superior power to regulate his hours of labor.

FACTS UPON WHICH THE STATE COURTS ACTED.

The State courts found these facts (R., fols. 17–19):

That the Erie Railroad Company, plaintiff in error, operates a line of railroads in the State of New York.

That on November 1, 1907, it permitted David Henion, a telegraph operator, who spaced trains by the use of the telegraph under what is termed, "the block system," and who came within the provision of the Labor Law of the State of New York which permitted him to be on duty but eight hours in a day of twenty-four hours, to be on duty more than eight hours in said day, viz.: from seven o'clock A. M. until seven o'clock P. M., there being no emergency caused by accident, fire, flood or danger to life or property. That there passed over the Erie Railroad Company's tracks on said day more than eight regular passenger trains, each way. That there were passengers on said trains whose journey commenced and ended within the State of New York, and which did not extend into any other State. That some of said trains were local trains carrying passengers and property from one point to another within the State of New York.

The court found additional facts on behalf of the Erie Railroad Company to the effect that their rail-

road lines extended outside of the State of New York. (R., pp. 11–19.) Also the specific duties of Henion on the day in question were defined, and there were other findings relative to the Labor Law, the Penal Law and the act of Congress referred to.

In the decision of the trial court (R., fols. 17–19), there was no finding that David Henion, the telegraph operator, was engaged in interstate commerce. The plaintiff in error proposed such a finding of fact and it was refused (R., fol. 32). For convenience we quote it:

> "Eighteen and one-half. That on November 1, 1907, said David Henion in the performance of his duties was an employee of the defendant engaged in interstate commerce. Refused."

So there is no finding here that said Henion who worked more than eight hours in twenty-four on the day in question was engaged in interstate commerce. The trial court would go no further than to find that plaintiff in error was engaged in interstate commerce (R., fol. 24).

We shall argue in our points that he was not engaged in interstate commerce within the meaning of that term, but was engaged in local or intrastate commerce, and that this case is distinguishable both on the facts and in principle from the case of *Northern Pacific Railroad Co. v. State of Washington ex rel. Atkinson, Attorney-General*, 222 U. S. 370, upon which plaintiff in error mainly relies for a reversal of the judgment.

Stated very briefly, for we shall argue them at greater length in the points, the material distinguishing facts between that case and this are these:

> 1. The State of Washington was dealing with a foreign corporation, one incorporated under and by virtue of the laws of another State,

namely, Wisconsin. It had no power to amend or alter the charter of this corporation, such as the State of New York retains over the plaintiff in error.

2. The Northern Pacific Railroad Company there permitted a member of a crew on one of its trains, engaged in interstate commerce, to work in excess of the State law. Here Henion was not a member of a train crew but worked in a stationary tower, and the finding is that he was not at the time engaged in interstate commerce.

So the cases are likewise distinguishable in principle. Here, the State has an undisputed and paramount right under its Constitution to alter, amend and repeal, at any time the charter of a corporation such as the plaintiff in error. It has not surrendered this power to the Federal government. It gave up to the Federal government the right only to regulate commerce. Congress cannot enter into a field which the State has reserved unto itself, viz., regulating corporations; and, manifestly, the States cannot undertake to enter into the field they have surrendered to the Federal government of regulating commerce. But the State act here does not undertake so to do. So long as the State law does not destroy the property rights of the plaintiff in error, or confiscate them, the State properly exercises its reserved power. It cannot be said to either destroy property rights or confiscate them and since it does not conflict with the Federal right to regulate commerce, it should be upheld.

It is a reasonable regulation and in the interests of the public health, efficient management of corporations and property protection, which the State has the right to extend to its citizens. If the act of Con-

gress denies the State this right then there is a usurpation of power by the Federal government. So this court should uphold the State act when it was enacted pursuant to the reserved power when it clearly appears that there is no conflict or repugnance between it and the Federal act.

This question has not yet been decided, as we view the decisions of this court. Briefly that is our claim and we have argued it more fully in the points.

In deciding the case in the Court of Appeals an opinion was written by Judge Hiscock in which he discussed at some length the questions involved. (R., pp. 26–33.)

Plaintiff in error concedes in its brief (p. 21), "in the absence of legislation by Congress with respect to the hours of service of railroad employees using the telegraph and telephone in connection with the movement of trains, the Labor Law of the State of New York drawn in question in this cause would have been a valid exercise of the police power of the State and probably free from constitutional objection, even as to its possible or actual effects upon such employees engaged in interstate commerce."

Because of this concession we shall not discuss (a) the proposition that the sections of the Labor Law involved were properly enacted within the police power of the State of New York; (b) that the Labor Law deprived the plaintiff in error of its liberty and property without due process of law; and (c) that it is invalid as depriving plaintiff in error of the equal protection of the law.

We ask for a dismissal of the case, or an affirmance of the judgment upon the following grounds:

1. That said statute was a valid enactment upon the ground that it was within the reserved power of the State to amend the charters of domestic corporations.

2. That the statute is not unconstitutional as an unauthorized interference by the State with interstate commerce. It having been enacted within the State's sovereign power of control over plaintiff in error, and not being in conflict with the Federal act, should be sustained.

3. That the decision in *Northern Pacific Railroad Company* v. *State of Washington ex rel. Atkinson as Attorney-General* is not controlling, and is distinguishable both on the facts and in principle.

POINTS.

I.

The statute in question was a valid enactment upon the ground that it was within the reserved power of the State to amend corporate charters.

It is conceded by the plaintiff in error that it is a corporation organized and existing under the laws of the State of New York (R., fol. 11 and first finding of fact, fol. 17).

The Revised Statutes of the State of New York, passed in 1827, provide:

> "The charter of every corporation which shall hereafter be granted by the legislature shall be subject to alteration, suspension or repeal in the discretion of the legislature." (1 R. S., 600, sec. 8.)

The Constitution of the State of New York, adopted in 1846, and also as revised in 1894 (the present Constitution of the State) provides:

> "Corporations may be formed under general laws but shall not be created by special act except for municipal purposes, and in cases where in the judgment of the legislature the

objects of the corporation can not be obtained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time, or repealed." (Constitution of the State of New York, art. VIII, sec. 1.)

The court will see from this provision of the Constitution that the State of New York really exercises the power of life and death, so to speak, over corporations created by it and over the plaintiff in error, because the plaintiff in error was created subject to this provision of the Constitution.

This power of the State to amend corporate charters has been sustained by many authorities.

Adirondack Railway Co. v. *New York State*, 176 U. S. 335.
New York & New England Railroad Company v. *Bristol*, 151 U. S. 556, p. 567.
People v. *O'Brien*, 111 N. Y. 1.
Greenwood v. *Freight Co.*, 105 U. S. 13.
Lord v. *Equitable Life Assurance Co.*, 194 N. Y. 212.
N. Y. C. & H. R. R. Co. v. *Williams*, 199 N. Y. 108.

In *Adirondack Railway Co.* v. *New York State* (*supra*), a railroad company had not made use of its right to condemn lands for the extension of its road. New York State thereafter took the lands in question for its forest preserve. It was held that under the State's power to amend corporate charters the State could retract from the railroad company the right of eminent domain over the lands the railroad might so have taken for extension.

Chief Justice Fuller, writing the opinion of the court said (p. 344):

> "Undoubtedly the power to amend or repeal cannot be availed of to take away property already acquired or to deprive a corporation of the fruits already reduced to possession of contracts lawfully made. But the capacity to acquire land by condemnation for the construction of a railroad attends the franchise to be a railroad corporation, and when unexecuted cannot be held to be in itself a vested right surviving the existence of the franchise or an authorized circumscription of its scope. (*People* v. *Cook*, 148 U. S. 397; *Pearsall* v. *Great Northern Railway Co.*, 161 U. S. 646; *Bank of Commerce* v. *Tennessee*, 163 U. S. 416, 424.)"

In *New York & New England Railroad Co.* v. *Bristol* (*supra*), a railroad corporation was compelled by the reserved power that the State had over charters to remove various grade crossings at its own expense. This the court said was not a violation of the Fourteenth Amendment to the United States Constitution. Chief Justice Fuller writing for the court said (p. 567):

> "And also that 'a power reserved to the legislature to alter, amend or repeal a charter authorizes it to make any alteration or amendment of a charter granted subject to it, which will not defeat or substantially impair the object of the grant, or any rights vested under it, and which the legislature may deem necessary to secure either that object or any public right.'"

In *People* v. *O'Brien* (*supra*), and in *Greenwood* v. *Freight Co.* (*supra*), railroad charters were expressly repealed under this reserved power.

In the case of *Lord* v. *Equitable Life Assurance Society* (*supra*), the charter of a life insurance company was so changed as to allow policyholders to vote for

directors. In writing the opinion for the court, Judge Vann said (p. 237):

> "The principle established by the authorities seems to be that the legislature under its reserved power may amend any charter in any respect that is not fundamental when the object of the corporation and property acquired by it are considered. Granting that it may not convert a corporation into something entirely foreign to the object for which it was created, such as turning an insurance company into a railroad company for instance, still it can regulate investments, methods of administration and details of procedure in the interest of the public and of all concerned. The public is interested in the proper management of a company with such enormous assets as the defendant possesses, because, if for no other reason, those assets were mainly derived from the public."

In *New York Central & Hudson River R. R. Co.* v. *Williams* (*supra*), the reserved power and not the police power was called into play to secure the payment of employees' wages semi-monthly.

There is but a single limitation to this general rule of the power to amend charters by the State enacted under its sovereign power, and that is, the power may not be exercised to destroy property or rights guaranteed by the Fourteenth Amendment of the United States Constitution, and by similar provisions of State Constitutions. This limitation is discussed in the cases that we have cited. The rule is perhaps more forcibly stated in the case of *St. Louis, Iron Mountain, etc., Railway* v. *Paul*, 173 U. S. 404, at 409, where Chief Justice Fuller writing for the court, said:

> "The power to amend 'cannot be used to take away property already acquired under the operation of the charter, or to deprive the cor-

> poration of the fruits actually reduced to possession of contracts lawfully made,' Waite, C. J., *Sinking Fund cases*, 99 U. S. 700; but any alteration or amendment may be made 'that will not defeat or substantially impair the object of the grant, or any rights which have vested under it, and that the legislature may deem necessary to secure either that object or other public or private rights,' Gray, J., *Commissioners* v. *Holyoke Water Power Company*, 104 Mass. 446; *Greenwood* v. *Freight Co.*, 105 U. S. 13; *Spring Valley Water Works* v. *Schottler*, 110 U. S. 347."

This case also illustrates the power of the State to secure a public benefit (the payment to a laborer of all that is due him, when discharged) through the exercise of this reserved power and not through the power of the general police. This power may be exercised even without reasons of public benefit so long as the limitation last mentioned is observed. *People* v. *O'Brien* (*supra*).

The principle is also recognized in other decisions. In *State* v. *Brown & Sharpe Mfg. Co.*, 18 R. I. 16 (17 L. R. A. 856), it was specifically held that although the act in question made no reference in direct terms to charters or to public laws relating to corporations in general, nevertheless, since it was sufficiently comprehensive to include the class, it would be regarded as a proper exercise of the reserved power.

The statutes of Kentucky, in *Berea College* v. *Kentucky*, 211 U. S. 45, forbade "any person, corporation or association of persons to maintain or operate any college" where whites and blacks were taught together. The United States Supreme Court upheld the validity of this act as to the plaintiff, on the ground that it was a legitimate exercise of the reserved power

to amend corporate charters. Without passing upon its validity so far as individuals were concerned, the court considered that it was clearly severable and might be valid as to corporations even if invalid as to individuals. Speaking of the objection that it did not purport to be an amendment of corporate charters, Mr. Justice Brewer, who delivered the opinion of this court, said in part (p. 57):

> "The language of the statute is not in terms an amendment, yet its effect is an amendment, and it would be resting too much on mere form to hold that a statute which in effect works a change in the terms of a charter is not to be considered as an amendment, because not so designated. * * *
>
> "Reading the statute as containing a separate prohibition on all corporations, at least, all state corporations, it substantially declares that any authority given by previous charters to instruct the two races at the same time and in the same place is forbidden, and that prohibition being a departure from the terms of the original charter in this case may properly be adjudged an amendment."

A State's power to control its own corporations is a power quite as vital to the State as the power of interstate commerce is to the Federal government. We do not need to argue that it has been surrendered to the central government for it is nowhere apparent that it has. To the extent only that a Federal power (which under our theory of government is supreme) conflicts with it, is the State power devitalized, and for the reason, as Mr. Justice Hughes has said in the Minnesota rate cases, 230 U. S. 352, 399, that "there is no room in our scheme of government for the assertion of State power in hostility to the authorized exercise of Federal power."

In *Northern Pacific R. R.* v. *Washington, etc.* (*supra*), upon which the plaintiff in error places so much reliance, for a reversal of the judgment of the Court of Appeals, the State of Washington was there dealing with a corporation foreign to it, namely, one which was created under the laws of another State and subject to its laws. (State of Wisconsin.) (See first paragraph of the complaint and the first paragraph of the answer in that case, the first alleging it is a Wisconsin corporation and the second admitting this allegation.) The State of Washington had no power to pass the law involved in that case under the reserved power of the State to amend charters. In that case the court was not dealing with an act of a State Legislature passed pursuant to this power of a State over corporations created by it. It is because of this fundamental difference in the cases that we urge that the rule laid down there is not applicable here, and should not be followed. This we have more fully discussed in the third point which follows.

II.

This court will follow the New York Court of Appeals in its finding that the State legislation in question was enacted under its reserved control over a corporation created by it.

It might be true that the sections of the Labor Law here involved could have been passed under the police power, to provide for public safety. But the State courts have found it was enacted also under the reserve power as well as the police power. The rule is that courts will regard an act as having been passed under any power under which the circumstances are sufficient to sustain it.

It appears now to be well settled that this court will

follow the New York Court of Appeals in its finding as to the source of power under which the State legislation in question was enacted. The New York Court of Appeals, as we stated above, upheld this legislation on the ground that it was an exercise of the State's reserved control over the corporation. (Opinion of Judge Hiscock, R., p. 51.)

> "Even if the statute failed as a valid exercise of the police power, personally I am not doubtful that under its reserved control over corporations the legislature might pass such an act in regulation of the performance of the business for which a railroad was organized. (*Lord* v. *Equitable Life Assurance Society*, 194 N. Y. 212, 237; *People* v. *Phyfe*, 136 N. Y. 554, 557; *Chicago Life Insurance Co.* v. *Needles*, 113 U. S. 574; *Louisville & N. R. R. Co.* v. *Kentucky*, 161 U. S. 677; *Mayor, etc.*, v. *Norwich & Worcester R. R. Co.*, 109 Mass. 103.)"

There is ample authority for this rule. *Adirondack Railway* v. *New York State*, 176 U. S. 335 (already cited):

> "In arriving at these conclusions the Court of Appeals was construing and applying the laws of the State of New York, and we perceive no adequate ground for declining to accept its views in accordance with the general rule on that subject."

The general rule referred to, that the Supreme Court of the United States will follow a State court in its construction of a State statute, was early announced by Chief Justice Marshall in *Elmendorf* v. *Taylor*, 10 Wheat. 152, 159, and has been followed since in many instances.

> *Forsyth* v. *Hammond*, 166 U. S. 506, 518.
> *Covington* v. *Kentucky*, 173 U. S. 231, p. 237.
> *Schaefer* v. *Werling*, 188 U. S. 516.

In *Elmendorf* v. *Taylor* (*supra*), Chief Justice Marshall defines the principle thus (pp. 159–160):

> "This court has uniformly expressed its disposition, in cases depending on the laws of a particular state, to adopt the construction which the courts of the state have given to those laws. This course is founded on principles supposed to be universally recognized, that the judicial department of every government, where such department exists, is the appropriate organ for construing the legislative acts of that government. Thus, no court in the universe, which professed to be governed by principle, would, we presume, undertake to say that the courts of Great Britain, or of France, or of any other nation, has misunderstood their own statutes, and therefore erect itself into a tribunal which should correct such misunderstanding. We receive the construction given by the courts of the nation as the true sense of the law, and feel ourselves no more at liberty to depart from that construction than to depart from the words of the statute. On this principle the construction given by this court to the constitution and laws of the United States is received by all as the true construction; and on the same principle, the construction given by the courts of the several states to the legislative acts of those states is received as true, unless they come in conflict with the constitution or treaties of the United States."

III.

The statute is not unconstitutional as an unauthorized interference by the State with interstate commerce, and the decision of this court in the Northern Pacific Railroad v. Washington Case, 222 U. S. 370, is not controlling here.

Plaintiff in error asks for a reversal of the judgment upon the ground that Congress by 34 Stat. 1415

(Hours of Service Act) completely regulated the hours of labor of railway employees concerned with the movement of trains, and that the State law was void from the date of its passage, and of no effect as to all such employees engaged in or performing duties in connection with interstate commerce; and contents itself in a great measure upon the single case above cited in our point. (Brief of plaintiff in error, p. 21.)

At the outset we may make clear our position, namely, that if Henion was engaged in interstate commerce at the time plaintiff in error worked him more than eight hours in twenty-four, the decision in the *Northern Pacific* case would probably control *if the court here was dealing with a corporation foreign to the State of New York.* We assert, however, that Henion was not engaged in interstate commerce; that the corporation involved was a domestic corporation over which the Legislature of the State of New York had power to amend and repeal its charter; that Henion was not one of a train crew and that the work which he was doing was local or intrastate.

We point out again the distinction between the case at bar and that case. There a law of the State of Washington prohibited more than sixteen hours' consecutive service of train crews. The Federal Hours of Service Law effective thereafter, provided the same limitation of sixteen hours on interstate trains. The State of Washington was dealing with a corporation organized under the laws of another State, viz., Wisconsin. Over it the State of Washington had no power to alter or repeal its charter. Moreover, the State enactment there was under the police power. Here, New York was dealing with a domestic corporation; the act was enacted under the reserved power; Henion was not one of a train crew, but worked in a tower in

Rockland county, New York State, spacing trains. He took no part in the actual operation of the train and the finding is that he was not engaged in interstate commerce.

This court held that the Federal act was a manifestation by Congress to remove from the sphere of State authority any control over the matter, and so the State could not collect penalties for a violation of its laws.

The cases are thus clearly distinguishable both on the facts and on legal principles.

(A) ALTHOUGH THE STATE ACT AFFECTS TO SOME EXTENT THE OPERATION OF INTERSTATE COMMERCE IT IS NONE THE LESS LOCAL IN ITS CHARACTER.

We have already in our statement called attention to the fact that the trial court refused to find that David Henion in the performance of his duties was an employee of the defendant engaged in interstate commerce (R., fol. 32).

In the opinion of the Court of Appeals, Mr. Justice Hiscock speaking, said (R., fol. 53):

> "For unless there shall be in the future such a separation of interstate and local traffic as has not yet occurred, and which might be made extremely burdensome to the railroads, it will seldom happen that agencies employed in moving the former will not also be moving the latter, and, therefore, if the State is prevented by a Federal statute like that before us from adopting additional but not conflicting requirements which it deems to be necessary, it will be unable to insure the safety of local passengers and traffic. And it is obvious that a factor of safety like that in the present Federal statute adapted as we must assume to average conditions prevailing throughout the country often will be quite insufficient under the special conditions prevailing in a given state."

There are numerous cases where such legislation has been sustained even though it affects somewhat interstate commerce, and the decisions were put upon the ground that such legislation was of a local nature.

Smith v. *Alabama*, 124 U. S. 465.
Nashville, etc., v. *Alabama*, 128 U. S. 96.

In *Smith* v. *Alabama*, *supra*, the Legislature of the State of Alabama enacted a law requiring locomotive engineers to be examined and licensed by a board to be appointed for that purpose, and providing that it should be unlawful for the engineer of any railroad train in the State to drive or operate or engineer any train of cars or engine upon the main line or roadbed of any railroad in the State which is used for the transportation of persons, passengers or freight, without first undergoing an examination and obtaining a license as therein provided. A violation of the statute was a misdemeanor and subjected the offender to a fine and imprisonment. Plaintiff in error was an engineer in the service of the Mobile & Ohio Railroad Company. His duty was to "drive, operate and engineer" a locomotive engine drawing a passenger train on that road, regularly plying in one continuous trip between Mobile in Alabama and Corinth in Mississippi, and *vice versa*, 60 miles of which trip was in Alabama, and 265 miles in Mississippi. It further appeared that he never drove, operated or engineered a locomotive engine hauling cars from one point to another exclusively within the State of Alabama. After this statute in Alabama took effect he continued to perform his duties without taking out the license required by the act.

He was proceeded against for a violation of the statute, and was committed to jail to answer the

charge. He petitioned a State court for a writ of *habeas corpus* upon the ground that he was employed in interstate commerce, and that the statute, so far as it applied to him, was a regulation of commerce among the states and repugnant to the Constitution of the United States. The writ was refused, and the Supreme Court of the State of Alabama on appeal affirmed that judgment.

It was held by this court there that the statute of the State of Alabama was not, in its nature, a regulation of commerce, even when applied to such a case as this; that it was an act of the Legislature within the scope of the powers reserved to the states, to regulate the relative rights and duties of people within their respective territorial jurisdictions, being intended to operate so as to secure safety of persons and property for the public; that so far as it affected transactions of commerce among the states it did so only indirectly, incidentally and remotely, and not so as to burden or impede them, and that, in the particulars in which it touched those transactions at all, it was not in conflict with any express enactment of Congress on the subject, nor contrary to any intention of Congress to be presumed from its silence.

The opinion of the court in that case was written by Justice Matthews. We quote his conclusions, similar to what we have stated above (p. 482):

> "In conclusion we find, therefore, first, that the statute of Alabama, the validity of which is under consideration, is not, considered in its own nature, a regulation of interstate commerce, even when applied as in the case under consideration; secondly, that it is properly an act of legislation within the scope of the admitted power reserved to the State to regulate the relative rights and duties of persons being

> and acting within its territorial jurisdiction, intended to operate so as to secure for the public, safety of person and property; and, thirdly, that, so far as it affects transactions of commerce among the States, it does so only indirectly, incidentally and remotely, and not so as to burden or impede them, and in the particulars in which it touches those transactions at all, it is not in conflict with any express enactment of Congress on the subject, nor contrary to any intention of Congress to be presumed from its silence."

In the last case, there was no act of Congress involved, but, nevertheless, the ruling was that although what the engineer did affected somewhat interstate commerce, yet the regulation of his acts was not unconstitutional on the ground of interference with inter state commerce.

In the case of *Nashville R. R. Co.* v. *Alabama* (*supra*), a State statute required locomotive engineers and other persons employed by a railroad company in a capacity which calls for ability to distinguish and discriminate between color signals, to be examined in this respect from time to time by a tribunal established for that purpose, and exacted a fee from the company for the service of examination. This court held that such an act did not deprive the company of property without due process of law, and, so far as it affected interstate commerce, is within the competency of the State to enact.

Regulation of trains engaged in interstate commerce at crossings has been held to be within the power of the State.

Southern Ry. Co. v. *King*, 217 U. S. 524.

In that case the defendants in error brought an action against the plaintiff in error for injuries re

ceived by them while riding in a buggy at a crossing of the defendant's railroad crossing in the State of Georgia. The alleged negligence was a violation of a certain statute of that State requiring the railroad company to check and keep checking the speed of its trains when approaching the crossing at which plaintiffs were injured. Another action for the same negligence was brought for the death of the husband of one of the defendants. The real question presented concerned the validity of the statute of the State of Georgia, it being the contention of the plaintiff in error that the statute was in violation of the interstate commerce clause of the Federal Constitution in that it was an illegal burden upon and an interference with interstate commerce. This court, in an opinion written by Mr. Justice Day, said (p. 532):

> "While this is true, the rights of the States to pass laws not having the effect to regulate or directly interfere with the operations of interstate commerce, passed in the exercise of the police power of the State in the interest of the public health and safety, have been maintained by the decisions of this court. We may instance some of the cases of this nature in which statutes have been held not to be a regulation of interstate commerce, although they may affect the transaction of such commerce among the States. In *Smith* v. *Alabama*, 124 U. S. 465, it was held to be within the police power of the State to require locomotive engineers to be examined and licensed. In *N. Y., N. H. & H. R. R. Co.* v. *New York*, 165 U. S. 628, a law regulating the heating of passenger cars and requiring guard posts on bridges was sustained. In *Lake Shore R. R. Co.* v. *Ohio*, 173 U. S. 286, it was held to be a valid enactment to require railway companies operating within the State of Ohio to cause three of its

regular passenger trains to stop each way daily at every village containing over three thousand inhabitants. In *Erb* v. *Morasch*, 177 U. S. 584, it was held that a municipal ordinance of Kansas City, Kansas, although applicable to interstate trains, which restricted the speed of all trains within the city limits to six miles an hour, was a valid exertion of the police power of the State. In the case of *Crutcher* v. *Kentucky*, 141 U. S. 47, this court said:

"'It is also within the undoubted province of the State legislature to make regulations with regard to the speed of railroad trains in the neighborhood of cities and towns; with regard to the precautions to be taken in the approach of such trains to bridges, tunnels, deep cuts and sharp curves; and, generally, with regard to all operations in which the lives and health of people may be endangered, even though such regulations affect to some extent the operations of interstate commerce. Such regulations are eminently local in their character, and in the absence of Congressional regulations over the same subject, are free from all constitutional objections, and unquestionably valid.'"

This court has also held a State law regulating the heating of passenger cars and requiring guard posts on bridges was valid.

N. Y., N. H. & H. R. R. Co. v. *New York*, 165 U. S. 628.

Other cases where this rule has been applied are the following:

Western Union Telegraph Co. v. *James*, 162 U. S. 650, where the State law forbade the running of freight trains on Sunday.

Hennington v. *Georgia*, 162 U. S. 299, where the statute involved required railroad companies to fix

their rates annually for the transportation of passengers and freight, and also required them to post a printed copy of their rates in passenger stations.

Chicago & N. W. Railroad v. *Fuller*, 17 Wall. 560, where the statute involved forbade the consolidation of parallel or competing lines of railroad.

Louisville & N. R. R. Co. v. *Kentucky*, 161 U. S. 677, where the State law provided that no contract should exempt a railroad corporation from liability as a common carrier or a carrier of passengers which would have existed if no contract had been made.

Chicago, Mil. & St. Paul R. R. v. *Solon*, 169 U. S. 133, where the State statute declared that when a common carrier accepts for transportation anything directed to a point of destination beyond the termination of its own line of road it shall be deemed thereby to have assumed obligation for its safe carriage to such point of destination, unless at the time of such acceptance such carrier shall be released and relieved from such liability by contract in writing signed by the owner or his agent.

Richmond & A. R. Co. v. *R. A. Patterson Tobacco Co.*, 169 U. S. 311, a law regulating the transfer of cars from one line to another.

Wisconsin Railroad Co. v. *Jacobson*, 179 U. S. 287, a law regulating separate carriages.

Chesapeake, &c. v. *Kentucky*, 179 U. S. 388.

Louisville, &c. v. *Miss.*, 133 U. S. 587, where the laws involved related to wharves, piers and docks.

Erb. v. *Morasch*, 177 U. S. 584, where the law involved regulated the stopping of trains at certain places.

This proposition was fairly well summed up in the case of *Cleveland C. C. & St. Louis R. R. Co.* v. *Illinois*,

177 U. S. 514, in this language of Mr. Justice Brown (page 516):

> "Few classes of cases have become more common of recent years than those wherein the police power of the state over the vehicles of interstate commerce has been drawn in question. That such power exists and will be enforced, notwithstanding the constitutional authority of Congress to regulate such commerce, is evident from the large number of cases in which we have sustained the validity of local laws designed to secure the safety and comfort of passengers, employees, persons crossing railway tracks, and adjacent property owners, as well as other regulations intended for the public good."

(B) CONGRESS UNDER ITS COMMERCE POWER MAY BY OCCUPYING THE ENTIRE FIELD OF REGULATION OF HOURS OF SERVICE ON INTERSTATE RAILROADS RENDER NUGATORY, WITH RESPECT TO THAT SUBJECT, A STATE'S POLICE POWER OR ITS LOCAL POWER OVER INTERSTATE COMMERCE; BUT NOT WITH THE STATE'S POWER OVER ITS OWN CORPORATIONS, WHICH CONTINUES AND GIVES FORCE TO A STATE STATUTE REGULATING HOURS OF SERVICE EXCEPT AT THOSE POINTS OF CONFLICT WITH THE FEDERAL COMMERCE LAW.

This court has always been reluctant to nullify State laws passed either under the local legislative power over interstate commerce (Minnesota Rate Cases, 230 U. S. 352, fixing intra-state; Lake Shore & Michigan Southern Ry. Co. v. Ohio, 173 U. S. 285, stoppage of trains for convenience or those laws enacted under its reserved police powers for the public health and safety.

Louisville & Nashville R. R. Co. v. *Kentucky*, 161 U. S. 677, 702.

Missouri, Kansas & Texas Ry. v. *Haber*, 169 U. S. 613, 623.

Sinnot v. *Davenport*, 22 How. 227, 243.

In *Louisville & Nashville R. R. Co.* v. *Kentucky* (*supra*), it was said by Justice Brown (p. 702):

> "It has never been supposed that the dominant power of Congress over interstate commerce took from the states the power of legislation with respect to the instruments of such commerce, so far as the legislation was within its ordinary police powers. Nearly all the railways in the country have been constructed under state authority, and it cannot be supposed that they intended to abandon their power over them as soon as they were finished. The power to construct them involves necessarily the power to impose such regulations upon their operation as a sound regard for the interests of the public may seem to render desirable. In the division of authority with respect to interstate railways Congress reserves to itself the superior right to control their commerce and forbid interference therewith; while to the states remains the power to create and to regulate the instruments of such commerce, so far as necessary to the conservation of the public interests."

Where, however, there is direct opposition or antagonism between State and Federal law, or Congress under its delegated power over commerce has seen fit to act upon the entire subject, such congressional action is exclusive of any State action under *State police* or *commerce powers*.

> *Tua* v. *Carriere*, 117 U. S. 201.
> *Gulf, Colorado, etc., Railway* v. *Hefley*, 158 U. S. 98.
> *Northern Pacific Ry. Co.* v. *Washington*, 222 U. S. 370, 378.

State police powers and State powers over commerce concurrent with that of Congress, like the commerce power itself of the Federal Government, *act*

upon subjects, the State's power over its own corporations *acts upon things*. Thus it is not difficult to hold that Congress by once assuming a *subject* within its comerce power, thereby excludes the exercise of a State police or legislative power, over that *subject* of commerce. *But this is not to say that Congress, by assuming a subject of commerce, can deprive a State of its powers over which Congress never had any control whatever*, namely, the State's power over local corporations. Congress could *not assume any portion of that power. It may, nevertheless, interfere with that State power by providing regulations with which the State law, enacted under this State power, are inconsistent or incompatible.* If there is collision, the State law *pro tanto* falls. If not, the State law saves itself by virtue of State power equal and not subservient to any power the States have given Congress.

The touch of the Federal commerce wand does not place corporations engaged in interstate commerce within the exclusive dominion of Congress. Simply because Congress has executed a police power under the authority given it by the Constitution, it does not follow that, though the State's police and commerce powers over the subject are gone, all State powers over the thing, the corporation, are extinguished. A State's authority over the corporations it has brought into being does not exist upon the mere permission or inaction of Congress.

Authorities are not frequent which treat of the State right over corporations in relation to the Federal commerce power. The cases speak mostly of the police power of the States in their conflict or reconciliation with the Federal power. Yet in *Gladson* v. *Minnesota*, 166 U. S. 427, 430, dealing with a State law requiring the stopping of trains for certain lengths of time at

county seats, the court was apparently referring to the power of the State over its own subject, the St. Paul & Duluth Railroad Co., notwithstanding the opinion alludes to the "police character" of the legislation. The court said, speaking through Mr. Justice Gray, (p. 430):

> "A railroad corporation created by a state is for all purposes of local government a domestic corporation, and its railroad within the state is a matter of domestic concern. Even when its road connects, as most railroads do, with railroads in other states, *the state which created the corporation* may make all needful regulations of a police character for the government of the company while operating its road in that jurisdiction. It may prescribe the location and the plan of construction of the road, the rate of speed at which the train shall run and the places at which they shall stop, and may make any other reasonable regulations for their management, in order to secure the objects of the incorporation, and the safety, good order, convenience and comfort of the passengers and of the public. All such regulations are strictly within the police power of the state. They are not in themselves regulations of interstate commerce, and it is only when they operate as such in the circumstances of their application, and conflict with the express or presumed will of congress exerted upon the same subject, that they can be required to give way to the paramount authority of the constitution of the United States."

In *Lake Shore & Michigan Southern Railway* v. *Ohio*, 173 U. S. 285, more nearly in point, interstate trains of that railroad, an Ohio corporation, were required by a statute of the State to stop at all villages or cities containing over 3,000 inhabitants. In sus-

taining the legislation, Mr. Justice Harlan said, p. 303 (italics ours):

> "And the State of Ohio by the statute in question has done nothing more than to so regulate the use of a public highway established and maintained under its authority as will reasonably promote the public convenience. It has not unreasonably obstructed the freedom of commerce among the states. Its regulations apply equally to domestic and interstate railroads. Its statute is not directed against interstate commerce but only incidentally affects it. *It has only forbidden one of its own corporations* from discriminating unjustly against a large part of the public for whose convenience that corporation was created and invested with authority to maintain a public highway within the limits of the state.
>
> "When Congress acts with reference to a matter confided to it by the Constitution, then its statutes displace all *conflicting* local regulations touching that matter, although such regulations may have been established in pursuance of a power not surrendered by the states to the general government. *Gibbons* v. *Ogden*, 9 Wheat. 1, 210; *Sinnott* v. *Davenport*, 22 How. 227, 243; *Missouri, Kansas & Texas Ry.* v. *Haber*, 169 U. S. 613, 626." (P. 297.)

No conflict with Federal commerce law was found in the above cases. Judge Hiscock of the New York Court of Appeals reasons logically that there is no conflict in our case (R., fol. 52) where he says:

> "Of course it is apparent that if the federal statute saying that a signal tower operator may not work more than nine hours prevents a state from saying under controlling conditions that he may not work in excess of a lessor number of hours, state legislation of an analogous character on other subjects which readily suggest

themselves, such as the proper weight of rails, the safe speed of trains, the necessary proportion of cars to be equipped with air brakes, may be prevented by federal legislation simply prescribing the minimum rule of precaution, and the protection by the state of the safety of its citizens at least rendered more complicated and difficult. For unless there shall be in the future such a separation of interstate and local traffic as has not yet occurred, and which might be made extremely burdensome to the railroads, it will seldom happen that agencies employed in moving the former will not also be moving the latter, and, therefore, if the state is prevented by a federal statute like that before us from adopting additional but not conflicting requirements which it deems to be necessary, it will be unable to insure the safety of local passengers and traffic. And it is obvious that a factor of safety like that in the present federal statute adapted as we must assume to average conditions prevailing throughout the country often will be quite insufficient under the special conditions prevailing in a given state."

" In view of the unity and indivisibility of the service of a train crew " this court decided in the Washington case, 222 U. S. 370, 375, that the subject did not admit of two regulations, one Federal and the other State, or two different State regulations. With train spacers the matter is quite different. They remain permanently in one State, and do not like members of a train crew pass into varying State jurisdictions. Therefore no uniformity is required among the States, but of course anywhere a maximum limitation is desirable, which the Federal law has here supplied.

We have in mind State action which might tend to conflict with Federal action, such as requiring an interstate train to run slower within the State than the

Federal statute required, thereby hampering interstate commerce in the rapid transportation of passengers and property. The statute under discussion, however, is a direct aid to the purpose of the Federal statute, and should be sustained upon the analogy of those cases in which the exercise of a State police power has been construed to be an additional benefit to the State with no injury to the Federal legislation

Reid v. *Colorado*, 187 U. S. 137.

Minnesota, Kansas & Texas Railway v. *Haber*, 169 U. S. 613:

(State statutes regulating introduction of diseased cattle, not in conflict with federal law on transportation of live stock from state to state.)

Wisconsin, Minnesota & Pacific Railroad v. *Jacobson*, 179 U. S. 287:

(State statute requiring connections to transfer cars, not in conflict with Interstate Commerce Act declaring that railroads shall provide proper facilities for the interchange of traffic.)

Chicago, Rock Island & Pacific Railroad v. *Arkansas*, 219 U. S. 453:

(State law requiring full crew of brakemen, not repugnant to Interstate Commerce Act providing for air brakes on all trains.)

Grand Trunk Railway v. *Michigan Railway Commission*, 231 U. S. 457:

(State law directing use of tracks for interchange of interstate traffic, not inconsistent with declarations of Congress in Interstate Commerce Act providing for switches, sidings and terminals.)

"*In the application of the principle of supremacy of an act of Congress in a case where the State law is but the exercise of a reserved power, the repugnance*

or conflict should be direct and positive, so that the two acts cannot be reconciled or consistently stand together." (*Reid* v. *Colorado*, page 148).

(C) THE STATE ACT HAVING BEEN ENACTED UNDER THE RESERVED POWER OF THE STATE OF NEW YORK OVER ONE OF ITS CORPORATIONS AND THERE BEING NO CONFLICT OR REPUGNANCE BETWEEN IT AND THE FEDERAL ACT, THE STATE ACT SHOULD BE HELD TO BE VALID.

In the *Northern Pacific Railroad* v. *Washington*, relied upon by the plaintiff in error for a reversal of this judgment, and in most of the other cases cited, the States were either dealing with foreign corporations, those incorporated under the laws of other States and over which they had no power to amend charters, or this question was not called to the court's attention.

The principle we have in mind was laid down clearly in the case of *Reid* v. *Colorado*, 187 U. S. 137. In that case the question arose under a statute of the State of Colorado which had been passed to prevent the introduction into the State of diseased animals. The statute made it a misdemeanor for anyone to bring into the State between April 1 and November 1 any cattle or horses from a State, territory or county south of the thirty-sixth parallel of north latitude, unless such cattle or horses had been held at some place north of said parallel of latitude for a period of at least ninety days prior to their importation into the State of Colorado, or unless the person, association or corporation, owning or having charge of such cattle or horses procured from the State Veterinary Sanitary Board a certificate or bill of health to the effect that said cattle or horses were free from all infectious or contagious diseases and had not been exposed at any time within ninety days prior thereto to any of such diseases. The expense of any inspection connected there-

with to be borne by the owner of such cattle or horses. Plaintiff in error had been convicted of bringing cattle into the State of Colorado in violation of this statute. The opinion was written by Mr. Justice Harlan and this principle he stated in the following words (page 148):

> "This court has said and the principle has been often reaffirmed that 'in the application of this principle of supremacy of an act of Congress in a case where the State law is but the exercise of the reserved power, the repugnance or conflict should be direct and positive, so that the two acts can not be reconciled or consistently stand together.'"

In our case here the act is an exercise of the reserved power over domestic corporations, the act not being repugnant or in conflict with the Act of Congress should under this principle be pronounced valid. In this respect and in others that we have discussed the case differs from the Northern Pacific R. R. Co. v. Washington case.

And it is this proposition upon which we ask an affirmance of the State court judgment, and which it seems to us has not been decided by this court.

To repeat, State police power and State local power over subjects of interstate commerce continue until Congress takes over the particular subject within the domain of its interstate commerce grant. Those State powers, it is clear, exist by mere sufferance of Congress. A state's power, however, over its local corporations never was surrendered, and existed in the State prior and since the Federal Constitution, standing upon as firm a foundation as the power Congress itself holds over interstate commerce.

This court then is charged with a duty to sustain the operation of both powers, and to allow the one to de-

feat the other only where a reconciliation is entirely impossible. The question is not one of survey, to find out whether Congress has assumed the field, but one primarily of effort to permit both powers, as they are being exercised, to march side by side; or otherwise, that both powers are at war, and nothing less than the surrender of the State statute can pacify the different jurisdictions.

Nor is it an answer to say that there is an actual irreconcilable difference, that Congress has in effect told interstate railroads they may work their train spacers nine hours each day, for Congress, under its interstate commerce power has not the power to grant immunity to a corporation from the operation of an authorized State power.

With possession of knowledge of the operation of railroads within the State, and with full knowledge of what things were requisite to further protect the lives of its citizens, the State has lessened by one hour the safety limit of employment in the conduct of a dangerous instrumentality. Congress cannot know as well the needs in this regard of the several States as the States do themselves; and a service of nine hours by a train spacer in New York, where train service is intensified and climatic conditions oftentimes severe, may be fraught with consequences not to be feared on lines with less frequent service in other States. We cannot see why both the State and Federal hours of service may not stand together here. One surely does not conflict with the exercise of the other.

SUMMARY.

New York's Eight-Hour Law was passed under its reserved power over its own corporations. The Federal Government may under its power over commerce,

by assuming the entire field of a particular interstate commercial subject, render nugatory all police regulation of a State thereto referring, and all local concurrent legislative power of State over interstate commerce. But it cannot override State laws enacted under State power over corporations created therein, except in so far as that State legislation conflicts directly with Federal legislation, for such State power is over *things* brought into life by State laws, not over *subjects* of interstate commerce where power is exercised by the States for lack of action by Congress. By providing a lesser number of working hours, New York's Eight-Hour Law is in aid rather than in defiance of the Federal "Hours of Service" Law.

IV.

The judgment of the State court should be affirmed, or, in the alternative, the writ of error dismissed with costs to the People of the State of New York.

Dated, April 14, 1914.

THOMAS CARMODY,
Attorney-General,

Attorney for the People of the State of New York, defendant in error.

THOMAS CARMODY,
Attorney-General,

WILBER W. CHAMBERS,
CLAUDE T. DAWES,
Deputy Attorneys-General, of Counsel.

APPENDIX.

"*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

"Section 1. Chapter four hundred and fifteen of the laws of eighteen hundred and ninety-seven, entitled 'An act in relation to labor, constituting chapter thirty-two of the general laws,' is hereby amended by adding a new section after section seven thereof, to be section seven-*a*, to read as follows:

"§ 7*a*. Regulation of hours of labor of block system telegraph and telephone operators and signalmen on surface, subway and elevated roads.— The provisions of section seven of this chapter shall not be applicable to employees mentioned herein. It shall be unlawful for any corporation or receiver, operating a line of railroad, either surface, subway or elevated, in whole or in part, in the state of New York, or any officer, agent or representative of such corporation or receiver to require or permit any telegraph or telephone operator who spaces trains by the use of the telegraph or telephone under what is known and termed the 'block system' (defined as follows): Reporting trains to another office or offices or to a train dispatcher operating one or more trains under signals, and telegraph or telephone levermen who manipulate interlocking machines in railroad yards or on main tracks out on the lines or train dispatchers in its service whose duties substantially, as hereinbefore set forth, pertain to the movement of cars, engines or trains on its railroad by the use of the telegraph or telephone in dispatching or reporting trains or receiving or transmitting train orders as interpreted in this section, to be on duty for more than eight hours in a day of twenty-four hours, and it is hereby declared that eight hours shall constitute a day of employment for all

laborers or employees engaged in the kind of labor aforesaid; except in cases of extraordinary emergency caused by accident, fire, flood or danger to life or property and for each hour of labor so performed in any one day in excess of such eight hours, by any such employee, he shall be paid in addition at least, one-eighth of his daily compensation. Any person or persons, company or corporation, who shall violate any of the provisions of this section, shall, on conviction, be fined in the sum not less than one hundred dollars, and such fine shall be recovered by an action in the name of the State of New York, for the use of the State, which shall sue for it against such person, corporation or association violating this act, said suit to be instituted in any court in this state having appropriate jurisdiction. Such fine, when recovered as aforesaid, shall be paid without any deduction whatever, one-half thereof to the informer, and the balance thereof to be paid into the free school fund of the State of New York. The provisions of this act shall not apply to any part of a railroad where not more than eight regular passenger trains in twenty-four hours pass each way; provided, moreover, that where twenty freight trains pass each way generally in each twenty-four hours then the provisions of this act shall apply, notwithstanding that there may pass a less number of passenger trains than hereinbefore set forth, namely, eight.

"§ 2. This act shall take effect October first, nineteen hundred and seven."

Chapter 523 of the Laws of 1907.

"Section 1. Subdivision four of section three hundred and eight-four-*h* of the penal code is hereby amended so as to read as follows:

"4. Who shall require or permit any employee engaged in or connected with the movement of any train

of a corporation operating a line of railroad of thirty miles in length, or over, in whole or in part within this state, to remain on duty more than sixteen consecutive hours; or to require or permit any such employee who has been on duty sixteen consecutive hours to go on duty without having had at least ten hours off duty; or to require or permit any such employee who has been on duty sixteen hours in the aggregate in any twenty-four hour period, to continue on duty or to go on duty without having had at least eight hours off duty within such twenty-four hour period; except when by casualty occurring after such employee has started on his trip, or by unknown casualty occurring before he started on his trip, and except when by accident or unexpected delay of trains scheduled to make connection with the train on which such employee is serving, he is prevented from reaching his terminal;

"Is guilty of a misdemeanor, and on conviction therefor shall be punished by a fine of not less than five hundred nor more than one thousand dollars for each offense."

Chapter 2939 of the Acts of the Fifty-ninth Congress of the United States.

"§ 2. That it shall be unlawful for any common carrier, its officers or agents, subject to this Act to require or permit any employee subject to this Act to be or remain on duty for a longer period than sixteen consecutive hours, and whenever any such employee of such common carrier shall have been continuously on duty for sixteen hours, he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such employee who has been on duty sixteen hours in the aggregate in any twenty-four hour period shall be

required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty. Provided, that no operator, train dispatcher or other employee who, by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train move ments, shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four hour period in all towers, offices, places, and stations, continuously operated night and day, for a longer period than thirteen hours, in all towers, offices, places, and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four hour period of not exceeding three days in any week; provided further, The Interstate Commerce Commission may after full hearing in a particular case and for a good cause shown extend the period within which a common carrier shall comply with the provisions of this proviso as to such case."

ERIE RAILROAD COMPANY *v.* PEOPLE OF THE STATE OF NEW YORK.

ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

No. 266. Argued April 24, 27, 1914.—Decided May 25, 1914.

When Congress acts in such manner as to manifest its constitutional authority in regard to interstate commerce the regulating power of the State ceases to exist, and if there is conflict between state and Federal legislation the former must give way.

After Congress acts on a matter within its exclusive jurisdiction there is no division of the field of regulation.

Regulation of the railroads is not a mere wanton exercise of power, but a restriction upon their management induced by public interest and safety; and so *held*, that the Hours of Service Act of 1907 is the judgment of Congress of the necessary extent of such restrictions as to employés engaged in interstate commerce which admits of no supplementary regulation by any of the States.

Provisions in the Labor Law of New York of 1907 relating to the hours of service of railroad telegraph operators engaged in interstate commerce are void in so far as they attempt to regulate interstate commerce, as Congress had completely covered the field by the Hours of Service Act of 1907, although that act did not take effect until March, 1908. *Northern Pacific Railway Co.* v. *Washington*, 222 U. S. 370.

Where the state court did not decide that a general law amounted to a repeal or alteration of the charter of a corporation, the contention that it did so decide cannot be founded on an expression of personal opinion to that effect of the judge writing the opinion.

Quære, and not decided in this case, whether it is competent for a State, through its power to alter or repeal charters of railroads incorporated under its laws, so as to displace or share the jurisdiction of Congress over interstate commerce.

Judgment based on 198 N. Y. 369, reversed.

THE facts, which involve the constitutionality under the Fourteenth Amendment of the eight hour provisions of the New York Labor Law of 1907 as applied to railroads,

and employés engaged in interstate commerce, are stated in the opinion.

Mr. Frederic D. McKenney, with whom *Mr. George F. Brownell* was on the brief, for plaintiff in error:

Congress by the "Hours of Service Act" of March 4, 1907, having completely regulated the hours of labor of railway employés concerned with the movements of trains, including those making use of the telegraph or telephone for that purpose, the law of the State of New York from the date of its passage was void and of no effect as to all such employés engaged in or performing duties in connection with interstate commerce. And this is so notwithstanding that the prohibitions of the Federal law, by the terms of the act itself, only became effective one year after the date of its passage, that is to say, on March 4, 1908. *Nor. Pac. Ry. Co.* v. *Washington*, 222 U. S. 370; see also *Adams Exp. Co.* v. *Croninger*, 226 U. S. 491, 505, 506; *McDermott* v. *Wisconsin*, 228 U. S. 115, 131–132; *Chicago, Ind. &c. Ry. Co.* v. *Hackett*, 228 U. S. 559, 567; *Simpson* v. *Shepherd*, 230 U. S. 352, 399, 400; and *Missouri* v. *Mo. Pac. Ry. Co.*, 212 Missouri, 658; *Wisconsin* v. *Chic. Mil. & St. P. Ry. Co.*, 136 Wisconsin, 407, cited by this court with approval in *Nor. Pac. Ry. Co.* v. *Washington*.

Mr. Wilber W. Chambers, with whom *Mr. Thomas Carmody*, Attorney General of the State of New York, and *Mr. Claude T. Dawes* were on the brief, for defendant in error:

The statute is valid as it is within the reserved power of the State to amend corporate charters. 1 Rev. Stat. N. Y. 1827, 600, § 8; Const. N. Y. of 1846 and 1894, art. VIII, § 1.

As to this power of the State to amend corporate charters, see *Adirondack Railway Co.* v. *New York*, 176 U. S.

335; *New York & New Eng. R. R. Co.* v. *Bristol*, 151 U. S. 556, p. 567; *People* v. *O'Brien*, 111 N. Y. 1; *Greenwood* v. *Freight Co.*, 105 U. S. 13; *Lord* v. *Equitable Life Assur. Co.*, 194 N. Y. 212; *N. Y. C. & H. R. R. Co.* v. *Williams*, 199 N. Y. 108.

The only limitation to this general rule is that the power may not be exercised to destroy property or rights guaranteed by the Fourteenth Amendment of the United States Constitution, and by similar provisions of state constitutions. *St. L., I. M. &c. Ry.* v. *Paul*, 173 U. S. 404, 409. See also *State* v. *Brown & Sharpe Mfg. Co.*, 18 R. I. 16; *Berea College* v. *Kentucky*, 211 U. S. 45.

A State's power to control its own corporations is a power quite as vital to the State as the power of interstate commerce is to the Federal Government. It has not been surrendered to the Central Government, and only to the extent that a Federal power conflicts with it is the state power devitalized. See *Minnesota Rate Cases*, 230 U. S. 352, 399.

This court will follow the New York Court of Appeals in its finding that the state legislation in question was enacted under its reserved control over a corporation created by it. *Adirondack Railway* v. *New York*, 176 U. S. 335; *Elmendorf* v. *Taylor*, 10 Wheat. 152, 159; *Forsyth* v. *Hammond*, 166 U. S. 506, 518; *Covington* v. *Kentucky*, 173 U. S. 231, 237; *Schaefer* v. *Werling*, 188 U. S. 516.

The statute is not unconstitutional as an unauthorized interference by the State with interstate commerce, and the decision of this court in *Nor. Pac. Ry.* v. *Washington*, 222 U. S. 370, is not controlling here.

The Hours of Service Act, 34 Stat. 1415, does not apply to employés employed in a State and engaged in intrastate business. In this case the employé was not engaged in interstate commerce; the corporation involved was a domestic corporation over which the legislature of the State of New York had power to amend and repeal its

charter; and the employé was not one of a train crew and the work which he was doing was local or intrastate.

Although the state act affects to some extent the operation of interstate commerce it is none the less local in its character. *Smith* v. *Alabama*, 124 U. S. 465; *Nashville &c. R. R.* v. *Alabama*, 128 U. S. 96.

Regulation of trains engaged in interstate commerce at crossings is within the power of the State. *Southern Ry. Co.* v. *King*, 217 U. S. 524. So also as to the heating of passenger cars and requiring guard posts on bridges. *N. Y., N. H. & H. R. R. Co.* v. *New York*, 165 U. S. 628.

In *West. Un. Tel. Co.* v. *James*, 162 U. S. 650, the state law forbade the running of freight trains on Sunday. In *Hennington* v. *Georgia*, 162 U. S. 299, the statute sustained required railroad companies to fix their rates annually for the transportation of passengers and freight, and also required them to post a printed copy of their rates in passenger stations. See also *Chicago & N. W. R. R.* v. *Fuller*, 17 Wall. 560; *Louis. & Nash. R. R. Co.* v. *Kentucky*, 161 U. S. 677; *Chicago, Mil. & St. P. R. R.* v. *Solon*, 169 U. S. 133; *Richmond & A. R. Co.* v. *Tobacco Co.*, 169 U. S. 311; *Wisconsin R. R. Co.* v. *Jacobson*, 179 U. S. 287; *Chesapeake &c. Ry.* v. *Kentucky*, 179 U. S. 388; *Louis. & Nash. Ry.* v. *Mississippi*, 133 U. S. 587; *Erb* v. *Morasch*, 177 U. S. 584; *Cleveland, C., C. & St. L. R. R. Co.* v. *Illinois*, 177 U. S. 514.

Congress under its commerce power may, by occupying the entire field of regulation of hours of service on interstate railroads, render nugatory, with respect to that subject, a State's police power or its local power over interstate commerce; but not with the State's power over its own corporations, which continues and gives force to a state statute regulating hours of service except at those points of conflict with the Federal commerce law. Cases *supra*, and see also *Mo., Kans. & Tex. Ry.* v. *Haber*, 169 U. S. 613, 623; *Sinnot* v. *Davenport*, 22 How. 227, 243.

Where there is direct opposition or antagonism between state and Federal law, or Congress under its delegated power over commerce has seen fit to act upon the entire subject, such congressional action is exclusive of any state action under state police or commerce powers. *Tua* v. *Carriere*, 117 U. S. 201; *Gulf, Col. &c. Ry.* v. *Hefley*, 158 U. S. 98; *Nor. Pac. Ry. Co.* v. *Washington*, 222 U. S. 370, 378. See also *Gladson* v. *Minnesota*, 166 U. S. 427, 430; *Lake Shore Ry.* v. *Ohio*, 173 U. S. 285.

In this case the statute is a direct aid to the purpose of the Federal statute, and should be sustained as an additional benefit to the State with no injury to the Federal legislation. *Reid* v. *Colorado*, 187 U. S. 137, 148; *Minn. &c. Ry.* v. *Haber*, 169 U. S. 613; *Wisconsin &c. R. R.* v. *Jacobson*, 179 U. S. 287; *Chi., R. I. & Pac. R. R.* v. *Arkansas*, 219 U. S. 453; *Grand Trunk Ry.* v. *Michigan Ry. Comm.*, 231 U. S. 457.

The state act having been enacted under the reserved power of the State of New York over one of its corporations, and there being no conflict or repugnance between it and the Federal act, the state act should be held to be valid.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Action for penalty brought by the people of the State of New York against defendant in error, herein called the railroad company, for an alleged violation of the Labor Law of the State entitled "An Act in relation to labor, constituting chapter thirty-two of the General Laws," as amended by Chapter 627 of the Laws of 1907.[1]

[1] "SECTION 1. Chapter four hundred and fifteen of the laws of eighteen hundred and ninety-seven, entitled 'An act in relation to labor, constituting chapter thirty-two of the general laws,' is hereby amended by adding a new section after section seven thereof, to be section seven-*a*, to read as follows:

"SECTION 7-*a*. Regulation of hours of labor of block system telegraph

It is alleged that at the times hereinafter mentioned the railroad company was a corporation under the laws of the State of New York and was and is operating a line of railroad in the State of New York, in Rockland County and

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and telephone operators and signalmen on surface, subway and elevated railroads.—The provisions of section seven of this chapter shall not be applicable to employés mentioned herein. It shall be unlawful for any corporation or receiver, operating a line of railroad, either surface, subway or elevated, in whole or in part, in the state of New York, or any officer, agent or representative of such corporation or receiver, to require or permit any telegraph or telephone operator who spaces trains by the use of the telegraph or telephone under what is known and termed the "block system" (defined as follows): Reporting trains to another office or offices or to a train dispatcher operating one or more trains under signals, and telegraph or telephone levermen who manipulate interlocking machines in railroad yards or on main tracks out on the lines or train dispatchers in its service whose duties substantially, as hereinbefore set forth, pertain to the movement of cars, engines or trains on its railroad by the use of the telegraph or telephone in dispatching or reporting trains or receiving or transmitting train orders as interpreted in this section, to be on duty for more than eight hours in a day of twenty-four hours, and it is hereby declared that eight hours shall constitute a day of employment for all laborers or employés engaged in the kind of labor aforesaid; except in cases of extraordinary emergency caused by accident, fire, flood or danger to life or property, and for each hour of labor so performed in any one day in excess of such eight hours, by any such employé, he shall be paid in addition at least one-eighth of his daily compensation. Any person or persons, company or corporation, who shall violate any of the provisions of this section, shall, on conviction, be fined in the sum of not less than one hundred dollars, and such fine shall be recovered by an action in the name of the state of New York, for the use of the state, which shall sue for it against such person, corporation or association violating this act, said suit to be instituted in any court in this state having appropriate jurisdiction. Such fine, when recovered as aforesaid, shall be paid without any deduction whatever, one-half thereof to the informer, and the balance thereof to be paid into the free school fund of the state of New York. The provisions of this act shall not apply to any part of a railroad where not more than eight regular passenger trains in twenty-four hours pass each way; provided, moreover, that where twenty freight trains pass each way generally in each twenty-four hours then the provisions of

other counties, extending from Piermont to Dunkirk, both in that State.

The following facts are also alleged: The railroad company, in violation of § 7-*a* of the Labor Law, required and permitted one David Henion, a telegraph operator, to be on duty more than eight hours, that is, from seven o'clock a. m. to seven o'clock p. m., on the first day of November, 1907, in the railroad company's tower at Sterlington, in the County of Rockland, New York, there being no extraordinary emergency caused by accident, fire, flood or danger to life or property.

His duty was to space trains by the use of the telegraph under what is known and termed the "block system" and to report trains to another office or offices and to train dispatchers, whose duties pertain to the movement of cars, engines and trains on the company's railroad, by the use of the telegraph.

There passed over the tracks of the railroad company on the day named more than eight regular passenger trains each way.

Judgment is prayed in the sum of $100.

The answer of the railroad company admits its incorporation and that it is operating a railroad as alleged, but alleges that its road extends from Jersey City, New Jersey, to Suffern, New York, and from Salamanca, New York, to Marion, State of Ohio, and elsewhere, passing through New Jersey, New York, Pennsylvania and Ohio, and that at all times mentioned in the complaint it was and is now engaged in interstate commerce and the transportation of persons, goods and merchandise by railroad from one State of the United States to other States of the United States, and to foreign countries.

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this act shall apply, notwithstanding that there may pass a less number of passenger trains than hereinbefore set forth, namely, eight.

"SECTION 2. This act shall take effect October first, nineteen hundred and seven."

It admits that the company required and permitted Henion to work as charged, but alleges that the cars, engines and trains that he was engaged in spacing and reporting were engaged in interstate commerce.

That the Labor Law of the State violates the Fifth and Fourteenth Amendments to the Constitution of the United States, as applied to Henion and other employés in the same class of work, in that it deprives both the railroad company and Henion of the liberty of contract and of property without due process of law and of the equal protection of the laws.

The answer also set up in defense the Federal "Hours of Service" act, approved March 4, 1907, in force one year after its passage (34 Stat. 1415, c. 2939), entitled "An Act to promote the safety of employés and travelers upon railroads by limiting the hours of service of employés thereon."

The law, among other things, authorizes the employment of employés such as Henion was, for nine hours in twenty-four hour periods when employed night and day and for thirteen hours when employed only during the daytime, and, in case of extraordinary emergency, to be on duty for four additional hours in such period on not exceeding three days in any week.[1]

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[1] "SEC. 2. That it shall be unlawful for any common carrier, its officers or agents, subject to this act to require or permit any employé subject to this act to be or remain on duty for a longer period than sixteen consecutive hours . . .

"Provided, That no operator, train dispatcher, or other employé who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four-hour period on all towers, offices, places, and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places and stations operated only during the daytime, except in case

The answer also alleges that the jurisdiction of Congress is exclusive, and that the Labor Law of 1907 is in excess of the power of the legislature of the State of New York and unconstitutional and void, in that it is an attempt to regulate commerce between the States.

A jury was waived and the case tried by the court, which found the facts as alleged in the complaint and that upon the trains which passed the tower at Sterlington there "were passengers whose journey commenced and ended in the State of New York and did not extend into any other State, and some of said trains carrying passengers and property from one point to another in the State of New York."

As a conclusion of law the court found that the railroad company violated the law, had incurred a penalty of $100 by so doing, and that § 7-*a* of the law "is valid and its provisions do not violate and are not in conflict with the Constitution of the United States or the constitution of the State of New York."

Upon the request of the railroad company the court also found the facts of the interstate character of the railroad as alleged in the answer and that Henion was employed as alleged, and found a number of other facts concerning the manner of operating the "block system" and the duties of Henion. There were also findings relative to the Labor Law, the Penal Law, so called, and the act of Congress of March 4, 1907. The findings only serve to emphasize the defenses of the company and need not be set out at length.

The court also made the following findings:

"That at all times mentioned in the complaint or hereinafter mentioned, the defendant was, and now is, engaged in interstate commerce, and the transportation of persons,

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of emergency, when the employés named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four-hour period on not exceeding three days in any week; . . ."

goods and merchandise by railroad from one State of the United States to other States of the United States.

"On that day [the day Henion was employed] there were fourteen eastbound and twelve westbound passenger trains, and twelve eastbound and fifteen westbound freight trains, which passed the Sterlington tower during said twelve hours.

"On November 1st, 1907, a majority of the trains which the said David Henion was engaged in spacing and reporting were engaged in interstate commerce, or in the transportation of passengers, persons, or property from one State to another."

The court refused to find—"That on November 1, 1907, said David Henion in the performance of his duties was an employé of the defendant engaged in interstate commerce."

The court further found that the effect of the Labor Law "was materially to increase the cost to the Erie Railroad Company of operating the 'Block System.'"

Judgment was entered for the penalty sued for. It was reversed by the Appellate Division, and a new trial granted, the court deciding that the jurisdiction of the subject-matter was exclusively in Congress and was exercised by the Hours of Service Law of March 4, 1907.

The Court of Appeals reversed the action of the Appellate Division and affirmed the judgment of the trial court. The Court of Appeals rested its decision on three propositions: (1) The Labor Law of the State was a legal exercise of the police power of the State. (2) There was no conflict between it and the act of Congress of March 4, 1907. "The State," the court said (198 N. Y., p. 381) "has simply supplemented the action of the Federal authorities. It is the same as if Congress had enacted that the classes of employés named might be employed for nine hours or less, and the State had then fixed the lesser number, which was left open by the Federal statute. The form of the latter

fixed the outside limit, but not expressly legalizing employment up to that limit, fairly seems to have invited and to have left the subject open for supplemental state legislation if necessary." (3) A statute does not become controlling until it actually becomes operative and that therefore, even if it should be decided that there was a conflict between the Federal and the state legislation after the former became effective, as the act of Congress did not take effect until March 4, 1908, in the meantime the state law was in operation.

The propositions decided by the Court of Appeals express the contentions made here by defendant in error and they are attempted to be supported by a citation of a number of cases in which this court has sustained legislation by the States more or less affecting interstate commerce. A review of them is unnecessary. Whatever difficulty may otherwise have been in the questions presented by the record have been met and overcome by decisions more apposite than the cited cases. The relative supremacy of the state and National power over interstate commerce need not be commented upon. Where there is conflict the state legislation must give way. Indeed, when Congress acts in such a way as to manifest its purpose to exercise its constitutional authority the regulating power of the State ceases to exist. *Adams Express Co.* v. *Croninger*, 226 U. S. 491, and cases cited. Also *Chicago, R. I. & Pac. Ry. Co.* v. *Hardwick Elevator Co.*, 226 U. S. 426; *Chicago, Ind. & L. Ry. Co.* v. *Hackett*, 228 U. S. 559; *McDermott* v. *Wisconsin*, 228 U. S. 115; *Minnesota Rate Cases*, 230 U. S. 352; *Taylor* v. *Taylor*, 232 U. S. 363.

This is the general principle. It was given application to an instance like that in the case at bar in *Northern Pacific Ry.* v. *Washington*, 222 U. S. 370. The case arose upon an asserted conflict between the Hours of Service Law of March 4, 1907, the one involved here, and a law of the State of Washington which also regulated the hours

of railway employés. The latter became effective June 12, 1907, that is, before the time the Federal Hours of Service Law was in force but after its enactment. The state act resembled the Federal act, and prohibited the consecutive hours of service which had taken place on the Northern Pacific Railroad and on account of which the action was brought by the Attorney General of the State against the company for the penalties prescribed for violation of the act. The railroad company admitted the facts but denied liability under the act, asserting that its train was an interstate train and was not subject to the control of the State because within the exclusive control of Congress on that subject. The trial court granted a motion for judgment on the pleadings, which was affirmed by the Supreme Court of the State. That court held that the train was an interstate train and conceded that Congress might prescribe the number of consecutive hours an employé of a carrier so engaged should be required to remain on duty; and when it so legislated upon the subject, its act superseded any and all state legislation on that particular subject. But the court held that the act of Congress did not apply because of its provision that it should not take effect until one year after its passage and until such time it should be treated as not existing.

We reversed the judgment on the ground that the view expressed was not "compatible with the paramount power of Congress over interstate commerce," and we considered it elementary that the police power of the State could only exist from the silence of Congress upon the subject and ceased when Congress acted or manifested its purpose to call into play its exclusive power. It was further said that the mere fact of the enactment of the act of March 4, 1907, was a manifestation of the will of Congress to bring the subject within its control, and to reason that because Congress chose to make its prohibitions take effect only after a year it was intended to leave the subject to state

power was to cause the act of Congress to destroy itself. There was no conceivable reason, it was said, for postponing the prohibitions if it was contemplated that the state law should apply in the meantime. The reason for the postponement, it was pointed out, was to enable the railroads to meet the new conditions.

The reasoning of the opinion and the decision oppose the contention of defendant in error and of the Court of Appeals, that the state law and the Federal law can stand together, because, as expressed by the Court of Appeals, "the State has simply supplemented the action of the Federal authorities," and, on account of special conditions prevailing within its limits, has raised the limit of safety; and the form of the Federal statute, although "not expressly legalizing employment up to that limit, fairly seems to have invited and to have left the subject open for supplemental state legislation if necessary."

We realize the strength of these observations, but they put out of view, we think, the ground of decision of the cases, and, indeed, the necessary condition of the supremacy of the congressional power. It is not that there may be division of the field of regulation, but an exclusive occupation of it when Congress manifests a purpose to enter it.

Regulation is not intended to be a mere wanton exercise of power. It is a restriction upon the management of the railroads. It is induced by the public interest or safety, and the "Hours of Service" law of March 4, 1907, is the judgment of Congress of the extent of the restriction necessary. It admits of no supplement; it is the prescribed measure of what is necessary and sufficient for the public safety and of the cost and burden which the railroad must endure to secure it.

Defendant in error attempts to distinguish *Northern Pacific Railroad Co.* v. *Washington*, *supra*, on the ground that the State was dealing with a corporation organized

under the laws of another State, and, the State of Washington had no power to alter or repeal its charter. This power, it is contended, the State of New York has over the Erie Railroad and exercised the power in the law under review, and that the Court of Appeals has so decided. It is asserted besides, that Henion was not engaged in interstate commerce. These assertions are not justified. The Court of Appeals did not decide that the Labor Law constituted an alteration or repeal of the charter of the company. The learned judge who delivered the opinion of the court expressed such to be his view, saying (p. 376) that "if the statute failed as a valid exercise of the police power, personally" he was "not doubtful that under its reserved control over corporations the legislature might pass such an act in regulation of the performance of the business for which a railroad was organized."

It is clear that the learned judge did not express the views of the court. We have no doubt that if the court entertained such view it would have been declared. It would have been a direct and, from the standpoint of the State, an adequate, solution of the questions involved, and would have made unnecessary the elaborate consideration of the extent of the police power of the State and its coincident exercise and adjustment with congressional power of regulation. The contention of defendant in error, therefore, has not the foundation asserted for it, and we may pass it without further comment, not considering whether it is competent for a State, through its power to alter or repeal the charter of railroads incorporated under its laws, to displace or share the jurisdiction of Congress over interstate commerce.

The assertion that Henion was not engaged in interstate commerce is also without foundation and is besides precluded by the opinion of the Court of Appeals. The interstate character of the business was recognized by the court and the law considered in view of such recognition. The

court said (p. 376) "that the Labor Law purports and attempts indiscriminately and inseparably, to regulate the hours of the classes of employés designated whether engaged in interstate or local traffic, and that, therefore, its validity must be tested by the power of the legislature over the former."

The trial court, it is true, undertook to make a distinction between the interstate business of the railroad and Henion's duties, but, in view of the cases which we have cited and of the decision of the Appellate Division and of the Court of Appeals, the distinction is untenable. *Balt. & Ohio R. R. Co.* v. *Interstate Commerce Commission*, 221 U. S. 612; *Second Employers' Liability Cases*, 223 U. S. 1.

Judgment reversed and cause remanded for further proceedings not inconsistent with this opinion.